HOUSE OF COMMONS

Issue No. 40

Wednesday, October 12, 1983
Thursday, October 20, 1983

Chairman: Mr. Keith Penner

CHAMBRE DES COMMUNES

Fascicule nº 40

Le mercredi 12 octobre 1983
Le jeudi 20 octobre 1983

Président: M. Keith Penner

Minutes of Proceedings of the Special Committee on

Indian Self-Government

Procès-verbaux du Comité spécial sur

L'Autonomie politique des Indiens

RESPECTING:

The status, development and responsibilities of band governments on Indian reserves, as well as the financial relationships between the Government of Canada and Indian bands

INCLUDING:

The Second Report to the House.

CONCERNANT:

Le statut, l'évolution et les responsabilités des administrations de bandes dans les réserves indiennes, de même que les rapports financiers qui existent entre le gouvernement du Canada et les bandes indiennes

Y COMPRIS:

Le deuxième rapport à la Chambre.

First Session of the Thirty-second Parliament, 1980-81-82-83

Première session de la trente-deuxième législature, 1980-1981-1982-1983

SPECIAL COMMITTEE ON
INDIAN SELF-GOVERNMENT

Chairman: Mr. Keith Penner
Vice-Chairman: Mr. Stan Schellenberger

Messrs

Allmand Manly
Chénier

COMITÉ SPÉCIAL SUR
L'AUTONOMIE POLITIQUE DES INDIENS

Président: M. Keith Penner
Vice-président: M. Stan Schellenberger

Messieurs

Oberle Tousignant

(Quorum 4)

Le greffier du Comité spécial
François Prégent
Clerk of the Special Committee

Pursuant to Standing Order 69(4)(*b*):

On Wednesday, October 12, 1983:
John McDermid replaced Frank Oberle.

On Thursday, October 13, 1983:
Frank Oberle replaced John McDermid.

Conformément à l'article 69(4)(*b*) du Règlement:

Le mercredi 12 octobre 1983:
John McDermid remplaceFrank Oberle.

Le jeudi 13 octobre 1983:
Frank Oberle remplace John McDermid.

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Department of Indian Affairs and Northern Development
Department of National Health and Welfare
Mrs. Eva Manly
Mrs. Ethel Pearson
Mrs. Barbara Reynolds

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Cochrane—Superior (Ontario)
(CHAIRMAN)

Mr. Stan Schellenberger, P.C.
Wetaskiwin (Alberta)
(VICE-CHAIRMAN)

Honourable Warren Allmand, Lib.
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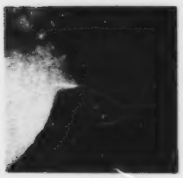
(Québec)

Mr. Jim Manly, N.D.P.
Cowichan—Malahat—
The Islands (B.C.)



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Mr. Raymond Chénier, Lib.
Timmins—Chapleau (Ontario)

Mr. Henri Tousignant, Lib.
Témiscamingue (Québec)

Ms. Roberta Jamieson
Ex officio member
Assembly of First Nations

Ms. Sandra Isaac, Liaison member
Native Women's Association
of Canada

Mr. Bill Wilson, Liaison member
Native Council of Canada

ORDERS OF REFERENCE

Special Committee on Indian
Self-Government (Task Force)

HOUSE OF COMMONS
Wednesday, December 22, 1982

ORDERED,—That a Special Committee of the House of Commons, to be composed of Mr. Penner, Mr. Allmand, Mr. Chénier, Mr. Tousignant, Mr. Oberle, Mr. Schellenberger and Mr. Manly be appointed to act as a Parliamentary Task Force on Indian Self-Government to review all legal and related institutional factors affecting the status, development and responsibilities of Band Governments on Indian reserves, including, without limiting the generality of the foregoing:

(a) the legal status of Band Governments;

(b) the accountability of band councils to band members;

(c) the powers of the Minister of Indian Affairs and Northern Development in relation to reserve land, band monies and the exercise of band powers;

(d) the financial transfer, control and accounting mechanisms in place between bands and the Government of Canada;

(e) the legislative powers of bands and their relationship to the powers of other jurisdictions;

(f) the accountability to Parliament of the Minister of Indian Affairs and Northern Development for the monies expended by or on behalf of Indian bands;

(g) all items referred to in section "H" of the report of the Sub-committee on Indian Women and the Indian Act;

and make recommendations in relation to the above questions in regard particularly to possible provisions of new legislation and improved administrative arrangements to apply to some or all Band Governments on reserves, taking into account the various social, economic, administrative, political and demographic situations of Indian bands, and the views of Indian bands in regard to administrative or legal change.

That the Committee, in carrying out its review, take into account:

(a) the jurisdiction of the Federal Government under section 91(24) of the *Constitution Act, 1867*;

(b) the recognition and affirmation of existing aboriginal and treaty rights of the aboriginal peoples in section 35 of the *Constitution Act, 1982*;

(c) the current economic restraint program of the Government;

(d) the fact that a First Ministers' Conference will be held for the purpose of identifying rights of the aboriginal peoples.

That the Committee have all of the powers given to Standing Committees by section (8) of Standing Order 65;

That the Committee have the power to retain the services of expert, professional, technical and clerical staff as may be deemed necessary;

That the Committee have the power to adjourn or travel from place to place in Canada and the United States;

That, notwithstanding the usual practices of this House, if the House is not sitting when an interim or final report of the Committee is completed, the Committee may make the said report public before it is laid before the House, but that, in any case the Committee shall report to the House finally no later than the first Monday following Labour Day;

That all the evidence adduced by both the Sub-committee on Indian Women and the Indian Act, and the Sub-committee on Indian Self-Government during the first Session of this Parliament, be referred to the Committee;

Provided that alternates appointed pursuant to temporary Standing Orders be named later.

ATTEST

C.B. KOESTER
The Clerk of the House of Commons

Monday, September 12, 1983

ORDERED,—That the present mandate of the Special Committee on Indian Self-Government be extended to the end of the current session.

ATTEST

C.B. KOESTER
The Clerk of the House of Commons

Section H of the report of the Sub-committee on Indian Women and the Indian Act (as referred to in section (g) of the Special Committee's Order of Reference):

H. AREAS FOR FURTHER STUDY

Your sub-committee has made note of several areas which require further study and which should be considered by the second sub-committee or otherwise given attention:

1) that the elimination of the entire concept of enfranchisement be studied further;

2) that an Office of the Aboriginal Rights Commissioner to protect the recognition of special rights of aboriginal peoples in Canada be considered for a function analogous to the Commissioner of Official Languages;

3) that the *Indian Act* be reviewed so as to reinforce group rights and to bring the Act in line with international covenants;

4) that traditional practices such as marriages, adoptions, etc., not be restricted or discriminated against by the *Indian Act*;

5) that discrimination in the Act against men, and against children be examined;

6) that a formula and process be devised for provision to Indian communities of land and resources for persons added to band lists as the result of the removal of discrimination clauses from the *Indian Act*;

7) that a means for band control of membership criteria, process, decisions and appeals in accord with international covenants be instituted;

8) that the subject of the rights of non-Indians such as residency, political and legal rights, retention of rights on death or divorce, be studied.

The Special Committee on Indian Self-Government has the honour to present its

SECOND REPORT

In accordance with its Orders of Reference of Wednesday, December 22, 1982 and Monday, September 12, 1983, your Committee submits the following report:

ACKNOWLEDGEMENTS

Since the Special Committee on Indian Self-Government began its work over a year ago, many people have been called upon to assist the Committee in its work. The Committee would at this time like to thank all those who participated in its deliberations and contributed to this report.

First, the Members wish to express their gratitude to all the witnesses who appeared before the Committee (*see Appendix A*). Others did not appear but submitted written briefs. The contribution of all those who took the time to share their views was invaluable to the Committee.

The Committee is also grateful to the Clerk of the Committee, Mr. François Prégent, to his colleague, Mr. Eugene Morawski, and to the other staff from the Committees Branch for their administrative support.

The drafting of this report was the result of many hours of work on the part of the writing team set up by the Committee to analyse and summarize the mass of evidence it received. The Committee thanks the four members of this writing team, Mrs. Barbara Reynolds and Mrs. Katharine Dunkley from the Research Branch, Library of Parliament, Mr. Peter Dobell from the Parliamentary Centre, and Rarihokwats, researcher for the Assembly of First Nations. Their efforts were greatly appreciated.

The Committee also expresses its appreciation to the other Members of Parliament and representatives from native peoples' organizations who devoted time to its work (*see Appendix B*).

Finally, the Committee wishes to thank the assistants and researchers in the Members' offices, who made an important contribution to the work of the Committee (*see Appendix H*).

REPORT OF THE SPECIAL COMMITTEE ON INDIAN SELF-GOVERNMENT

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INTRODUCTION

I sit
on a
man's back
choking him
and making
him carry
me and yet assure myself and
others that I am sorry for him
and wish to lighten his load by
all possible means - except by
getting off his back.

—Leo Tolstoy, *What Then Must We Do?*,
1886. (Quoted in a submission to
the Special Committee by
The Mayo Indian Band, Yukon)

CHAPTER 1

INTRODUCTION

The Committee's Mandate

The Standing Committee on Indian Affairs and Northern Development had, over the years, received substantial evidence from Indian people about the numerous difficulties they were experiencing in their financial, institutional and legislative relationships with the federal government. Consequently, in its Fifth Report to the House of Commons on June 1, 1982, the Committee asked for authority "to examine the government of Canada's total financial and other relationships" with Indian people. On August 4, 1982, the House of Commons responded to this request with a two-part Order of Reference.

The Committee was first directed to form a sub-committee "to study the provisions of the *Indian Act* dealing with band membership and Indian status, with a view to recommending how the Act might be amended to remove those provisions that discriminate against women on the basis of sex". Known as the Sub-committee on Indian Women and the Indian Act, its report was approved by the Standing Committee and tabled with the Clerk of the House of Commons on September 22, 1982 as the Standing Committee's Sixth Report.

Pursuant to the second part of its reference, the Standing Committee then appointed another sub-committee, which it called the Sub-committee on Indian Self-Government. This sub-committee was directed, among other things, to make recommendations to Parliament ". . .in regard particularly to possible provisions of new legislation and improved administrative arrangements to apply to some or all Band Governments on reserves taking into account the various social, economic, administrative, political and demographic situations of Indian bands, and the views of Indian bands in regard to administrative or legal change".

In December 1982, the House of Commons revised its committee rules. As a result, the House decided on December 22 to upgrade the sub-committee to a special committee. The reference from the House of Commons specifically stated that the Special Committee was to

be known as "The Parliamentary Task Force on Indian Self-Government", an important recognition by the House of the inquiry's broad nature. Eight matters the Sub-committee on Indian Women and the Indian Act had recommended for further study were added to the Special Committee's reference. A copy of the Special Committee's orders of reference can be found on page v. The Special Committee chose to interpret its mandate broadly, so as to allow witnesses maximum flexibility in offering suggestions about how the relationship between Canada and Indian people should be changed.

The Special Committee was also directed to take account of the Constitutional Conference of March 1983, held for the purpose of identifying and defining the rights of aboriginal peoples. The Constitutional Conference had an influence on the Special Committee's work. Although the Committee's study and the constitutional talks were two quite separate processes, some of the issues overlap, and this proximity created some confusion. In some cases witnesses expressed the fear that the Committee was pre-empting the constitutional process. Some witnesses, particularly those in Alberta, where the Committee travelled in late 1982, felt strongly that no discussions about change in the legislative relationship between Canada and Indian peoples should occur until aboriginal and treaty rights were identified and defined in the Constitution. Still others, while recognizing the necessity of constitutional action, acknowledged that there could be a positive role for legislation.

To emphasize the distinction between its task and the constitutional discussions, the Special Committee suspended its hearings for a short period surrounding the Constitutional Conference. Immediately before the Conference, the Committee issued a press release that drew no conclusions but outlined relevant testimony the Committee had heard relating to issues before the Conference. Members of the Special Committee also attended the Conference as observers.

At the Conference an accord was signed to continue the constitutional process and to place the subject of self-government on the agenda of the next Conference. The Committee thus believes that its report on self-government could be of assistance to those participating in discussions at the next Conference. Moreover, the implementation of some of the Special Committee's recommendations will require constitutional change.

Ex Officio and Liaison Members

As there are no Indian Members of Parliament, the Special Committee invited national aboriginal organizations to work with it to ensure that the issues were well understood by the Committee. The Assembly of First Nations was asked to designate a representative to participate fully in the Committee's work as an *ex officio* member with all rights except that of voting. In addition, the Native Council of Canada and the Native Women's Association of Canada were invited to designate liaison members. Each of the three organizations was also invited to name a researcher to the Committee's staff.

At times throughout its hearings the Special Committee was received with some scepticism. As mentioned earlier, some witnesses felt that the Committee should not have been formed until after the constitutional issues had been resolved. In a number of cases there was uncertainty about the role of the Committee, particularly with respect to the Indian band government proposal initiated by the Department of Indian Affairs and Northern Develop-

ment (DIAND). Many witnesses referred to the consultations held in 1967 and 1968 for the purpose of amending the *Indian Act* and the subsequent introduction of the 1969 White Paper which, they felt, did not reflect the views they had given. In still other cases, witnesses did not distinguish between the Special Committee and the Standing Committee (many of its members are the same) and took the opportunity to air grievances against the Department. Committee members had to emphasize constantly that the Committee was not a consultative mechanism on the DIAND Indian band government proposal and that the Committee was quite separate from the Department. As well, in some places, notably Alberta, Saskatchewan and the Maritimes, objections were raised to the presence of the *ex officio* or liaison members of the Committee. All of these reactions reflected a sense of mistrust and uncertainty about the Committee's role and responsibilities.

Relationship with Other Aboriginal Peoples

It should be pointed out that the Special Committee was directed to examine Indian self-government, not aboriginal self-government. The Committee therefore devoted its efforts exclusively to discussing changes in the relationship between Canada and Indian peoples, even though the Constitution identifies three aboriginal peoples—Indians, Inuit and Métis. Inuit were not among the witnesses. Although some Métis people were included as witnesses as part of delegations from the Native Council of Canada and its affiliates, the Committee did not have a mandate to report on issues of concern to the Métis.

The Special Committee Process

To ensure that the Canadian public was informed about its work, the Committee placed advertisements in various newspapers throughout Canada and used the media as widely as possible to publicize its activities.

The Committee received information in three principal ways: from oral testimony at public meetings where members questioned witnesses; from submissions made in writing; and from the research projects it commissioned. To give prospective witnesses an idea of the range of items under study, the Committee distributed a list of sample questions that witnesses might expect to be asked. Included in the list were questions relating to structures of government, the process of achieving self-government, fiscal relationships, the delivery of services, economic development, and treaty and aboriginal rights.

The Committee endeavoured to hear as many oral presentations as possible from Indian governments and from other organizations and individuals. Criteria were established for the selection of witnesses to ensure a representative cross-section of Indian bands and organizations. The Committee heard a total of 567 witnesses, during 215 oral presentations. Witnesses' names and affiliations are listed in Appendix A.

To obtain first-hand information, the Committee travelled to all regions of Canada. Of its 60 public meetings, only 21 were held in Ottawa. The Minister of Indian Affairs appeared before the Committee in Ottawa on four occasions; officials of the Departments of Justice, Secretary of State, and National Health and Welfare also testified. The Assembly of First Nations and the Native Women's Association of Canada each appeared twice in Ottawa and

the Native Council of Canada once. Among the other witnesses in Ottawa were two Indian organizations and seven Indian bands and governments who were unable to meet with the Committee during its cross-country hearings.

In its travels, the Committee generally tried to hold meetings on reserves or native premises. Of the 39 hearings on the road, 14 were held on reserves, 9 in friendship centres, 3 in Indian offices and 13 in hotels or halls. The Committee also travelled to Washington, D.C., to meet with United States government officials and with U.S. national Indian organizations (*see Appendix G*). This trip continued to five Pueblo reservations in New Mexico.

The Committee also sought evidence through research projects. Four major subjects were identified as significant areas where specialized information was required. Research projects from private consultants were commissioned on the following subjects:

1) federal expenditures and mechanisms for their transfer to Indians;

2) the First Nations and the Crown, a study of trust relationships;

3) relations between aboriginal peoples and governments in other parts of the world; and

4) the economic foundations of Indian self-government.

When the studies were completed, the researchers met with the Committee *in camera* to provide brief overviews of their reports and respond to questions. These studies proved to be valuable aids in the preparation of this report. More detailed descriptions of them can be found in Appendix F.

The Committee was originally scheduled to table its final report on September 12, 1983, but was unable to complete its work by this deadline. Consequently, the Committee tabled its First Report on Monday, September 12, 1983, requesting that its mandate be extended to the end of the current session. The Committee's First Report was concurred in by the House and thus the Committee continued its work.

Further details on how the Committee organized its work are provided in Appendix E.

Powers of Committees

The House of Commons Special Committee on Indian Self-Government is a parliamentary body made up of representatives from the three political parties. It can make recommendations to the House of Commons, but implementation requires action by the government. This can take the form of legislation submitted to Parliament or policy changes within the existing legislative authority. In addition, the rules of the House of Commons provide that a committee can request that the government submit a comprehensive response to the committee's report within 120 calendar days of the tabling of the committee's report (see page 136 of this report). With respect to the numerous criticisms the Committee heard about DIAND actions, in some cases the Committee made direct representations to the Minister, while other matters were referred to the Standing Committee on Indian Affairs.

Terminology

Throughout the report the Committee has used the term *Indian First Nations* to describe the entities that would be exercising self-government. Although the terms of reference refer to "Indian self-government", the majority of witnesses referred to themselves as members of First Nations. In order to familiarize the general public with the term, the Committee decided to use *Indian First Nations* in this report. In the following chapter, the Committee examines the historical background of this term.

SETTING THE STAGE

CHAPTER 2

SETTING THE STAGE

Indian First Nations

For thousands of years prior to European exploration and colonization, North America was inhabited by many different indigenous peoples organized into political entities and groupings based on common languages and cultural traditions. Along the eastern seaboard alone, explorers encountered dozens of distinct peoples.

At that time, the term normally used in Europe to describe people speaking the same language and having the same cultural traditions was 'nation'; hence there could be many national groups living in one state. When Europeans encountered the different North American peoples it was natural to apply the term in common use in Europe at the time; they described these separate peoples as 'nations'. Thus the Royal Proclamation of 1763 refers to "the several Nations or Tribes of Indians with whom We are connected".

In recent years indigenous peoples have given new expression to their distinctiveness and their origins. Names have assumed a special significance. *Eskimo* and *Indian* (a term that arose because the earliest explorers mistakenly thought they had reached India) are perceived as European terms. Inuit have asked that they be called what they call themselves—*Inuit*—meaning simply, *the People*. In less than two decades the term has come into general use.

The peoples of Canada now known as 'Indians' face a different situation. Inuit speak more or less one language, so they were able to take an indigenous word that has meaning for all Inuit. The Indian peoples of Canada, however, speak dozens of distinctly different languages; their common languages are English and French. Indian peoples in Canada have thus extracted from history an English term that had been used in the Royal Proclamation, in treaties and in major legal decisions in the United States—the word 'nation'. Together they refer to themselves as 'First Nations', a term with historical and political significance.

The term nation has particular sensitivity for many English-speaking Canadians because it is linked to the Quebec question in Confederation, but as used by Indian people it does not have separatist connotations. Rather, it means a group of people with a common language, culture and history who identify with each other as belonging to a common political entity.

Conflicting Views of History

The view of history held today by most non-Indian Canadians and the perspective held by most Indian people are almost mirror images. Indian people consider the 'discoverers' and 'explorers', in whose memory monuments are erected and postage stamps issued, to have been intruders in a land already well known to the nations that inhabited it. Indian people know their nations to have been productive, cultured, spiritual, intelligent civilizations comparable to those in Europe at the time of first contact. But they are portrayed instead as savages and pagans, unknowing of religion and needing instruction in simple tasks. Because only a one-sided, negative portrayal has been widely disseminated, non-Indian Canadians are poorly prepared to understand the perspective held by Indian people and to comprehend the background behind the distressing and unacceptable situation of Indian people in Canada today. This often leads to confrontation.

Indian people view treaties as reaffirmations of their sovereignty and rights and as agreements to allow settlement in certain areas; non-Indians regard treaties as an extinguishment of rights, an acceptance of the supremacy of the Crown, and a generous gift of land to the Indians so they might have land of their own. Indian people see Canadians respecting their own traditions and ancient doctrines such as Magna Carta, while at the same time regarding the Royal Proclamation as antiquated and Indian tradition as inappropriate for modern times.

Instead of accepting the Indian view of their own history and culture, non-Indians see only the self-fulfilling stereotypes that victimize people of the First Nations as drunks and welfare recipients, unable to practise acceptable standards of conduct and incapable of learning. That their situation has produced numerous examples of this image cannot be denied. But Canadians and their governments must understand their own part in creating the basic causes of this situation. Not only has the situation not been of the Indians' own making, but the federal government has removed from Indians the access to and control over their own resources that would allow them to take the actions necessary to end an unacceptable situation.

Particularly relevant to this report on Indian self-government is the view held by non-Indians that political structures were unknown to Indian people prior to contact with Europeans. Contrary to this view, most First Nations have complex forms of government that go far back into history and have evolved over time. They often operated in accord with spiritual values, because religion was not separated from other aspects of First Nation life. Indian nations did not generally have written constitutions, but, like England, conducted their affairs on the basis of traditions modifed with pragmatic innovations. Witnesses gave evidence to the Committee of how these Indian political concepts had directly affected non-Indian institutions. Specifically, they described how the political philosophy of the Iroquois Confederacy had been incorporated into the Constitution of the United States.

Among the many examples presented to the Committee by witnesses, two forms of First Nation governmental organization are illustrative. The Iroquois (as they were known by the French) or Six Nations (as the English called them) or the Haudenosaunee (*People of the Longhouse*, as they called themselves) have a formalized constitution, which is recited every five years by elders who have committed it to memory. It provides for a democratic system in which each extended family selects a senior female leader and a senior male leader to speak on its behalf in their respective councils. Debates on matters of common concern are held according to strict rules that allow consensus to be reached in an efficient manner, thus ensuring that the community remains unified. A code of laws, generally expressed in positive admonitions rather than negative prohibitions, governs both official and civil behaviour. Laws are passed by a bicameral legislature, made up of senior and junior houses. A council of elders oversees the general course of affairs. Since officials are chosen from each extended family, the system is called 'hereditary'. While the commonly held belief is that hereditary chiefs hold dictatorial powers, these leaders are actually subject to close control by their people and can be removed from office by them.

The Canadian government suppressed the Haudenosaunee government by jailing its leaders and refusing to give it official recognition. In 1924, the council hall at the Six Nations Reserve was raided by the Royal Canadian Mounted Police (RCMP). All official records and symbols of government were seized and have never been returned. The system of 'band councils' mandated in the *Indian Act* was installed in its place.

The second example is that of the Potlatch, a system used by many First Nations on the West Coast. From time to time, community or national leaders call assemblies which are widely attended. Through ceremony, song, dance and speeches, new leaders are installed in office. Wealth is redistributed through an economy based on giving rather than accumulating. Names are given and recorded. Political councils are held and decisions are made. History is recalled and instructed. Spiritual guidance is given. While the system of the Potlatch is very different from that to which Europeans are accustomed, it contains all the necessary elements to maintain continuity, good government and a sense of identity, and it permits people to conduct their own affairs and to determine the course of their destiny.

As was the case with the Haudenosaunee, the Potlatch was outlawed by the Canadian government. Attendance at Potlatch functions was prohibited by law as late as 1951, and jail sentences were handed down to violators. All of the ceremonial items and symbols of government were seized by the federal government. Despite the return of some items, a large number have not been returned and are dispersed in museums in Canada and abroad. People who lived according to the Potlatch had to practise their religious beliefs clandestinely and were forced to live under a system of government imposed on them. Despite this suppression, traditional governmental systems like that of the Haudenosaunee and the Potlatch have not disappeared.

The Committee values the understanding it gained during the course of its hearings. All Canadians would benefit from similar information so that their understanding of their relationship to the Indian First Nations could be extended. In this way, the popular view of Indians could be corrected. They would learn that Indians were not pagan and uncultured, but peoples who moved from free, self-sustaining First Nations to a state of dependency and social disorganization as the result of a hundred years of nearly total government control.

This Committee's report, if implemented fully, will change this state of affairs. All sectors of Canada, the federal government and provincial governments can work together with Indian First Nations to put an end to this era of history and to create the new relationship the Committee calls for.

Social Conditions

The extent of the social disintegration and deprivation arising from the history of relations between Canada and Indian peoples is evident in the publication *Indian Conditions: A Survey*. Published by the Department of Indian Affairs and Northern Development in 1980, it provides the sobering facts about social conditions among Indian people today. Officials from the Department of National Health and Welfare confirmed that conditions are not improving:

> The infant mortality rate for Indian people in 1980 was 24.3, which is still two and a half times the national average;. . .our perception is that unless. . .the Indian Health Policy works, where we have more people taking responsibility for their own health, we cannot improve it simply by putting in more medical services. . . .
>
> [The situation] is still bad. Accidents, violence, and poisonings are the number one cause of death. They are three times higher than the national average. Rates of suicide, certainly in the young age group, are six times the national average. It is difficult. It is a tough problem, and it is almost out of our control. But we monitor it. There is a slow improvement, but not as fast as it should be. (Sub 6:36)*

Some of these conditions are detailed in the accompanying table.

Obstacles and Limitations

These social conditions clearly demand immediate attention. Yet Indian people are faced with an array of bureaucratic and legislative obstacles that limit their ability to act. Foremost among these is the complexity of governmental structures for dealing with issues of concern to Indian people. Moreover, the *Indian Act* itself restricts Indian initiatives.

Governmental Complexity

Indian people must work through a complex governmental structure in order to meet even basic needs. Complexity at the federal level is further compounded by the need to deal, on some issues, with provincial authorities as well. The following list illustrates the range and number of federal departments and agencies confronting Indian people. Further details can be found in Appendix D.

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* The Committee has used the following system for citing witnesses' testimony. 'Sub' or 'Special' means the Minutes of Proceedings and Evidence of the Sub-committee on Indian Self-Government or the Special Committee on Indian Self-Government. (See Chapter 1 for an explanation of the difference between the Special Committee and the Sub-committee.) The figure before the colon indicates the issue number, while the figure after the colon refers to the page number. Thus, Sub 6:36 means that the testimony can be found on page 36 of Issue No. 6 of the Minutes of Proceedings and Evidence of the Sub-committee on Indian Self-Government.

Child Welfare: The proportion of Indian children in care has risen steadily to more than five times the national rate.

Education: Only 20 per cent of Indian children stay in school to the end of the secondary level; the comparable national rate is 75 per cent.

Housing: Nearly 19 per cent of on-reserve homes have two or more families living in them; these conditions affect 40 per cent of all status Indian families.

Facilities: In 1977, fewer than 40 per cent of Indian houses had running water, sewage disposal or indoor plumbing facilities; the national level of properly serviced houses is over 90 per cent.

Income: The average income of Indian people is one-half to two-thirds of the national average.

Unemployment: The unemployment rate among Indian people is about 35 per cent of the working age population; in some areas it is as high as 90 per cent.

Prisoners: Native people are over-represented in proportion to their population in federal and provincial penitentiaries. In Manitoba, Saskatchewan and the North, Native people represent more than 40 per cent of the prison population. The proportion of Indian juveniles who are considered delinquent is three times the national rate.

Death Rate: Despite improvements over the past 10 years, the death rate among Indian people is two to four times the rate for non-Indians.

Causes of Death: Accidents, poisoning and violence account for over 33 per cent of deaths among Indian people, as compared with 9 per cent for the Canadian population as a whole. Indian people die from fire at a rate that is seven times that for the rest of the Canadian population.

Violent Death: The overall rate of violent deaths among Indian people is more than three times the national average.

Suicide: Indian deaths due to suicide are almost three times the national rate; suicide is especially prevalent among Indians aged 15 to 24.

Infant Mortality: The infant mortality rate (up to the age of four weeks) among Indian children is 60 per cent higher than the national rate.

Life Expectancy: If an Indian child survives its first year of life, it can expect to live 10 years less than a non-Indian Canadian. The life expectancy of Indian women, for example, is 66.2 years, while non-Indian women can expect to live 76.3 years.

Hospital Admissions: Indians use hospitals about 2 to 2.5 times more than the national population.

Departments providing programs and services:

- Department of Indian Affairs and Northern Development
  —the principal link between the federal government and Indian people on legal, treaty and, until recently, constitutional matters, as well as the major provider of services and programs
- Department of National Health and Welfare
  —operates an Indian health program, including 400 health facilities
- Department of the Secretary of State
  —funds political, social and cultural development activities of some Indian groups
- Department of Justice
  —provides legal advice to departments dealing with Indian matters and has a leading role in constitutional discussions
- Ministry of the Solicitor General
  —administers the criminal justice system (RCMP, penitentiaries, parole system)
- Ministry of State for Small Business and Tourism
  —administers a $345 million Native Economic Development Fund

Central and co-ordinating agencies:

- Ministry of State for Social Development
  —reviews departmental program and legislative proposals where they affect the welfare and social development of Indian people
- Ministry of State for Economic and Regional Development
  —co-ordinates policies and programs related to industrial and regional development
- Treasury Board
  —approves departmental spending estimates
- Federal-Provincial Relations Office and Office of Aboriginal Constitutional Affairs
  —co-ordinates federal participation in the constitutional process and consultations between the federal government and aboriginal peoples

The Indian Act

General concerns

The *Indian Act* presents a paradox for Indian people; it confirms the special status of Indians, but it can also be viewed as a mechanism of social control and assimilation. In *Making Canadian Indian Policy*, Sally Weaver refers to "the century-old ambiguity that

Indians have felt about the *Indian Act*—their resentment of its constraints and yet their dependence on it for the special rights it provided."*

The *Indian Act* is a comprehensive piece of legislation that circumscribes activities in all sectors of Indian communities. It places constraints on the rights of Indian people and bands and limits their ability to govern themselves effectively. The main purposes of the Act, as described by the Department of Indian Affairs and Northern Development (DIAND), are:

> to provide for band councils and the management and protection of Indian lands and moneys, to define certain Indian rights, such as exemption from taxation in certain circumstances, and to define entitlement to band membership and to Indian status.

The first consolidated *Indian Act* was passed in 1876; the Act was last amended over thirty years ago. It contains many anomalies and inadequacies.

Among the criticisms of the *Indian Act* is its failure to recognize the diversity of Indian peoples. The Act treats Indians as a homogeneous group without taking into account variations in culture, language, resources, size and location of communities. The absence of flexibility has also been perceived as a means of assimilation.

Serious objections were also registered with respect to the relationship between Indian band councils and the Department. Band councils exercise delegated powers. In fact, they are viewed for the most part as extensions of DIAND. Even the Department states that "band governments are more like administrative arms of the Department of Indian Affairs than they are governments accountable to band members".** Band councils are the only Indian governmental organization recognized in the *Indian Act*. But tribal councils, treaty organizations, and provincial, regional and national associations of various kinds play a vital role in the political activities of Indian people. Further details about some of these institutions can be found in Appendix C.

Departmental control of Indian activities has been a consistent element of Indian life. In the past, an Indian agent representing the Department at the local level had control over virtually all aspects of life, even to the point of issuing passes to allow Indians to leave the reserve temporarily. While the Indian agent has disappeared, the Department still exercises considerable control, particularly over band governments. Witness after witness said that the Department makes planning and budgetary decisions without adequate input from bands.

Chiefs and councillors felt constrained by a system that does not enable them to respond to the needs of their communities. They are in a particularly awkward position because they are accountable to DIAND for moneys received, but they are also accountable to their people, whose priorities and needs are often at variance with departmental requirements. While various policy directives have emphasized consultation with the bands, real control still rests with DIAND. A recent study concluded:

> Over the long run the most contentious aspect of the *Indian Act* was the sweeping power that it gave to administrators and to the federal government. The *Indian Act* extended the

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* Sally Weaver, *Making Canadian Indian Policy: A Hidden Agenda 1968-1970* (Toronto: University of Toronto Press, 1981), p. 19.

**Canada, DIAND, *Strengthening Indian Band Government* (Ottawa, 1982).

> regulatory reach of the government into virtually every nook and cranny of Indian life. Indians, unlike other Canadians, were not faced with a plurality of governments and government departments but rather with a single government and a single department. Although the Act presented a veneer of self-government and Indian participation in the control of their lives, even the veneer was an illusion.*

Restrictions on band and band council powers

Bands and band councils are creatures of the *Indian Act*. That is to say, all their legally recognized powers are defined in and, more importantly, limited to those specifically mentioned in the *Indian Act*. Many important matters necessary to the functions of government in modern society are omitted from the Act. These omissions have resulted in great uncertainty about the legal capacity of bands and of band councils and have raised questions as to whether a band council can sign contracts, bring law suits, and generally act in the name of the band. A band's legal status depends on other statutes:

> The cases have concluded that a band is not a corporation, even though bands do exhibit some of the characteristics of a corporation. A band has been held to be a person, and an employer, in some instances, but these instances are restricted to the particular statute involved and the definition of the person or employer. For example, in the *Moses Tom* case from Manitoba, a band was not a person capable of making application for custody of one of its members because it was not a person within the meaning of the Act. On the other hand, under the *Coroner's Act* of B.C. the Masset Band Council was held to be a person that was capable of demanding an inquest into the death of one of its members. So whether a band is a person or an employer is entirely up to the statutory interpretation of the applicable statute, and whether a band is a person or employer by its own merits has not been judicially interpreted. (Canadian Indian Lawyers' Association, Sub 13:10)

Because there are no general rules in the *Indian Act* or elsewhere in Canadian law, each case is decided narrowly by interpreting the statute that applies in the circumstances. Each new situation raises new questions. This uncertainty has been a great impediment to band initiatives.

The Canadian courts have held that bands cannot acquire title to land. Nor can they sue or be sued. As the Association of Iroquois and Allied Indians noted, this means that the federal government "is often involved in band transactions where it has no active role but is made a party out of uncertainty as to the band's capacity to do business. . . .Creditors often look to the federal government for payment of band accounts since bands are considered to be non-suable." (Special 16A:11)

A Halifax law firm, Aronson, MacDonald, described the practical problems that result from this uncertainty:

> The uncertainty permeates all dealings between bands and employees, suppliers, contractors, financial institutions and governments. It is constantly assumed that there is no point in taking a band to court as it is not a suable entity. Section 89(1) of the *Indian Act* is frequently called in aid to support this assumption, although the provision is concerned only with granting an immunity to effectively collect a debt from a band, an immunity commonly granted to governments. However, the assumption clearly affects many commercial transactions and the legal manner of entering into contracts, for example. (Written Submission, November 29, 1982)

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* J. Rick Ponting and Roger Gibbins, *Out of Irrelevance: A Socio-Political Introduction to Indian Affairs in Canada* (Toronto: Butterworths, 1980), p. 12.

One remedy is for band members to incorporate as a company to carry on business ventures, own land or undertake other activities for the benefit of the band. This solution presents additional difficulties; because a corporation is not "an Indian" for purposes of the Act, it cannot benefit from tax exemptions available to Indian people. Incorporation has many other implications. For example, land held by the corporation may not be considered "Lands reserved for the Indians" (under the *Constitution Act, 1867*, formerly the *British North America Act*). Thus provincial, not federal, laws will apply.

Section 81 of the *Indian Act* sets out the by-law making powers of band councils. These powers are totally inadequate for the varied situations of Indian peoples in the twentieth century. The Musqueam Band, for example, is located in Vancouver and owns prime residential land. If that land were to be developed, the band would need the power to enact zoning and building by-laws, among other matters, powers that bands do not have now.

Even the limited powers of band councils are further diminished because they can be rendered invalid by federal laws, federal regulations or the Minister's disallowance. Provincial laws 'of general application' also interfere with band council powers. Councils are virtually powerless as governments. Many witnesses described the council's role as administrator of government policy:

> Under the current system of band government, the chief and council are so restricted in providing the three basic functions of government that it can hardly be called government at all, but more properly the administration of federal policy at a local level. Under the current Act the council can regulate little, except weeds and dogs on the reserves, without the blessing first of the Minister and his administrative arm.
>
> The council's role in representation of the people's wishes is, for the most part, ignored by both senior levels of government. All too often band governments must resort to confrontation, to media events, to expensive lobbying just to get heard.
>
> . . .Again, in a government's function of allocation the bands of our experience are for the most part restricted by the Act and the Department's policy to the delivery or distribution of resources as allocated by the Department.
>
> Stripped of the authority to operate the fundamental functions of government, current band governments are little more than factotums of federal control. (Quesnel Community Law Centre, Special 20:168-169)

Recent attempts to revise the *Indian Act*

The last major revision of the *Indian Act* occurred in 1951 following a detailed review in 1946-48 by a Special Joint Committee of the Senate and the House of Commons. A departmental history notes that the main features of the 1876 legislation were not altered:

> The new *Indian Act* did not differ in many respects from previous legislation. The main elements of the earliest Dominion legislation, i.e., protection of *Indian lands* from alienation and *Indian property* from depredation, provision for a form of *local government*, methods of ending Indian status, were preserved intact.*

The history also described the reduction in the Minister's responsibilities to a "supervisory role, but with veto power". Nevertheless, the remaining powers of the Minister are considerable.

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* Canada, DIAND, *The Historical Development of the Indian Act* (Ottawa, 1978), p. 149.

> Despite argument to the contrary, the *powers* of the Minister and Governor in Council remained formidable. Administration of over half of the Act was at the discretion of the Minister or Governor in Council, the latter being empowered to declare any or all parts of the Act inapplicable to any band or individual Indian, subject only to another statute or treaty.*

Between July 1968 and May 1969 the federal government embarked on a series of consultations throughout Canada to identify changes that should be made to the *Indian Act*. The meetings had scarcely been completed when the government tabled its *White Paper on Indian Policy*, which called for far-reaching changes in the legislative framework governing Indian-Canada relations, including the repeal of the *Indian Act*. Adverse Indian and public reaction to the proposal to terminate the special status of Indians was so strong that the government withdrew the paper in 1971.

A resolution calling for the partial revision of the *Indian Act* was proposed by the National Indian Brotherhood (NIB) at its annual General Assembly in 1975. Some preliminary work on issues such as surrendered lands, taxation, Indian government, education and anachronisms within the Act was conducted by a joint NIB/Cabinet committee between 1975 and 1978, but those talks broke off without agreement. Since then, the National Indian Brotherhood and its successor, the Assembly of First Nations, have opposed piecemeal change or change initiated by the Department alone.

The policy of devolution

As a result of the breakdown of these processes, the *Indian Act* has remained in force unchanged. The Department, however, has implemented a policy of devolution in order to permit bands and Indian organizations to exercise more powers.

This policy was launched in the mid-1960s when the Department began to transfer responsibility for managing and delivering programs to individual bands. Services such as social assistance, child care, educating children in Department-run schools, and providing and operating community infrastructure were among the first to be transferred. In 1979, Treasury Board approved the first set of "Terms and Conditions for Contributions to Indian Bands and Organizations". Departmental figures reveal a steady increase in the funds administered by bands:

1971	$ 34.9 million	16% of total budget
1976	147.6 million	31% of total budget
1982/83	526.6 million	50% of total budget

In addition to contributions to cover the delivery of services, bands also receive core funding to cover general administrative expenses.

This policy of devolution has transferred only the delivery of services to the band level; control over programs, policies and budgets remains with the Department. While the Department has continued to refer to this process as "strengthening band government on Indian reserves", Indian witnesses consistently criticized the policy for failing to transfer real control to Indian people:

> We found that the Department has too much control. The bands are told what to do and what not to do. Program direction stems from the Department instead of the band. The

* *Ibid.*

> system is outdated and it is costly. The organization does not relate to the aspirations of Indian leaders and band membership. The organization is program- rather than people-oriented. The system promotes dependency on the Department instead of self-reliance. Department structure does not lend itself to the amount of work done. Bands are unable to pay staff reasonable wages; for example, many have not received a raise in years. Also, bands want to be trained in the management of their own lands. (Federation of Saskatchewan Indian Nations, Special 11:36)

The legal framework has remained, and it has limited the Department's implementation of devolution. The *Indian Act* was not intended to provide opportunities for Indian administration of programs. The Minister commented on the difficulties of continuing the policy of devolution with the current Act in force:

> . . .In consultation with the Indian leadership, we in the Department, and I think of myself as minister and my predecessors, have been attempting to stretch the *Indian Act* as far as we can to accommodate demands for change. . . We have done this largely through devolution, but our ability to respond adequately to Indian needs is severely limited, and there are several reasons for this. The formal requirements of control which we must follow in accordance with the estimates, are incompatible with the current practice of devolution. (Sub 2:16-17)

Departmental views on the *Indian Act*

In his first appearance before the Sub-committee, the Minister tabled two documents, *Strengthening Indian Band Government in Canada* and *The Alternative of Optional Indian Band Government Legislation*, which he subsequently circulated to all bands. *Strengthening Indian Band Government in Canada* outlined the Department's views of the major practical difficulties caused by restrictions in the *Indian Act*:

> *First*, the exercise of all these powers is subject to various kinds of control by the Minister and/or the Governor in Council. In most instances, the federal government's power of discretionary control of by-laws and other powers is not exercised in practice if a band is acting within the law. The fact that it exists, however, complicates the accountability of band government and often leads to interminable technical complications to accomplish the simplest act.
>
> *Second*, land tenure system under the *Indian Act* is based on the historical view that reserve lands were meant for the exclusive use of Indians and were to be protected for Indians until they could control their lands like anyone else. This protection was for both bands and individual members of the band. The *Indian Act*, therefore, limits the ability of both the band and the individual to deal with the land.
>
> *Third*, the Minister also has trust responsibilities in relation to band moneys which prevent him from permitting band governments to control their own assets and to use them as they would wish for their own development.
>
> *Fourth*, band governments have few legislative powers in social and economic development areas. The Department of Indian Affairs has devolved the administration of many such programs to numerous bands, but has retained the power of program definition.
>
> *Fifth*, the legal status of band governments has been put in question by the courts. It is currently unclear whether band governments have legal power to contract with other legal entitites.

The Minister argued that legislative change is needed immediately. He explained that a minority of bands are constrained in pursuing economic development by the restrictions in the current Act:

> There have been bands. . .that are on the outskirts of municipalities and that want to get ahead with developmental projects, want to have control of their own land, want to get under way with certain economic development, and they are being hampered because of the fact—and criticizing me. I acknowledge they are a minority of bands, but they are very critical of the fact that we have not proceeded. (Sub 2:35)

The Department has explored several alternatives for providing "a new base from which Indian bands could exercise the equivalent level of political responsibility enjoyed by all other Canadians within their own local communities". The alternatives include a complete revision of the *Indian Act*; partial revision of and additions to the *Indian Act*; the development of a series of subject acts affecting Indians (an Indian Education Act, an Indian Financial Administration Act, and so on); development of a series of regional or individual band Indian Acts; and the development of companion legislation to the *Indian Act* to allow for optional Indian band government at the community level.

The Minister expanded upon the latter option in *The Alternative of Optional Indian Band Government Legislation*. Such legislation would be based on the concept "that the primary locus of decision-making is within the Indian band itself" and might include some of the following elements or characteristics:

> *Optional legislation*: It should be optional since no single approach is universally appropriate. "Bands which wish to continue to operate under that present system should be allowed to do so."
>
> *Band charter*: Each interested band would develop its own band charter; this would be "one of the requirements for entry into Indian band government legislation. This charter, or constitution, would outline, in its own terms, the nature of the relationship which would exist between the Indian band government and the band membership."
>
> *Expanded powers*: "The power to pass authoritative by-laws; the power to adopt other pertinent laws by reference if they so choose; the ability to enter into agreements with other bands and other government authorities and agencies to provide services on reserves; the ability of developing that service delivery capability themselves; the power to enter into agreements with banks and other financial institutions in their own right; the power to raise additional financial resources within their own jurisdictions by levying taxes on both Indian and non-Indian interests."
>
> *Control over lands*: The legislation would give the band "authority and responsibility to grant interests in land to both Indians and others" while ensuring that lands remain "lands reserved for the Indians, in order to keep such lands within the legislative competence of the federal government."
>
> *Membership*: Bands would "be able to determine their own membership, subject to respect for acquired rights, and some minimal connection, either by descent or by marriage, of the individual with the band."
>
> *Enacting by-laws*: There would be "a clear statement of the capacity of Indian band governments to enact by-laws in order to allow for the implementation of their program powers."

Funding: "The legislation would require as a prior condition that the necessary financial resources are available to make it work. . . . Indian band governments would presumably have to meet their own assumed responsibility for the proper use and expenditure of these funds, and become accountable to their own band members, within the terms of both the legislation and the band charter and by-laws, for maintaining agreed-to levels of program service delivery."

Role of DIAND: "Since band governments established under federal legislation would be junior governments, much like municipal governments are junior to the provinces which create them, the federal government would continue to play some kind of supervisory role, by which is meant that it could have the authority to review and reject band by-laws if necessary."

The document also outlined other questions that DIAND felt would need to be resolved:

- additional powers in the areas of membership;
- management and control of reserve land and trust moneys, health, housing, social assistance, and control of non-renewable resources on reserves;
- law enforcement and the administration of justice;
- appeals to the Minister from band members concerning irregularities and suspected wrong-doing; and
- the effect of band government by-laws on neighbouring municipalities and/or provincial lands.

The subject of the trust relationship of the Minister was also addressed in this document. It suggested that this relationship between the Indians and the Minister "would be significantly changed", but the Minister hastened to point out in testimony that "there is no desire on my part to abrogate treaty and aboriginal rights" in making this proposal. (Sub 12:15) According to the document, one interpretation of the new trust relationship might be as follows:

> One of the major changes which could be brought about by Indian band government legislation might be that the Minister would no longer be regarded as having a residual fiduciary trust responsibility for decisions made by an Indian band government from the point at, and in the jurisdictional area within which, it assumes local control (responsibility) over its own affairs. The decisions it makes would be its own; the long-term responsibility would be its own. However, this would not reduce any existing responsibility which the Minister may have up until that local control is assumed. The Minister's general responsibility for monies voted by Parliament would continue, as would the Minister's responsibilities in areas where the Minister's authority is retained.

When the Committee began its study of self-government, it did not set out to seek approval of any of the Department's proposals. (Sub 14:22) Indian witnesses were greatly concerned that the Committee was a front for the proposed legislation. They feared that the Committee hearings would be regarded as "consultation" on a band government bill:

> We are afraid, after these hearings have concluded, the Minister of Indian Affairs will introduce legislation designed to free the federal government of its obligations to Indian people. Once your sub-committee has completed its hearings and submitted its report, the Minister may claim the new legislation was developed with full consultation with Indian people. (Yellowhead Tribal Council, Sub 10:37-38)

Witnesses unanimously rejected any band government bill. Their principal criticism was that the proposal involves a delegation of power rather than a recognition of the sovereignty of Indian First Nation governments. Indian governments are not to be regarded as junior governments, they said, and any changes should involve more than a transfer of administrative responsibility. To do otherwise would be to continue the old policies.

> We are disappointed in the extreme by the narrow and limited version of self-government which the Minister has put forward. It seems deliberately to be slanted to focus discussion on the minor and administrative aspects of self-government, when it could range to far more broad and mature concepts. (Blood Band, Sub 8:134)

Witnesses were also concerned that the proposed legislation would alter the trust relationship between the federal government and Indian people. Witnesses insisted that the special relationship not be changed.

> We oppose the suggestion that new legislation would alter in any significant way the special trust relationship that exists between the Crown and the Indian people of Canada. Any legislation of Indian self-government should not be employed by Parliament as an indirect measure of diminishing trust responsibilities of the federal government. (Swampy Cree Tribal Council, Special 35:13)

A fear that legislation would convert Indian governments into municipal governments was also raised:

> Implicit in the concept is a transition from an Indian reserve with communal land holdings to a provincial municipality in which land titles, property taxation and provincial legislative control are paramount. In such a context the status and function of an Indian chief and council could be relegated to a virtual non-entity. There would be an inevitable loss of Indian jurisdiction. (Indian Association of Alberta, Letter to the Minister, February 1, 1983)

Witnesses also criticized the reference to whether bands were "ready" to govern, a suggestion that reinforces the colonial attitude that Indians must be taught to manage their own affairs.

> In the Minister's paper to the committee, entitled *The Alternative of Optional Indian Band Government Legislation*, he makes a number of references to bands being able to demonstrate a level of ability, or the ability of developing that service delivery capability themselves. These are not the standards set by the Indian people for their councils, but the Department's criteria. This approach clearly reveals a deep-seated colonial mentality based on the notion that the uncivilized have to be raised by the administrative measures and taught to manage their own affairs. (Indian Association of Alberta, Sub 8:13)

Some bands even suggested that current difficulties in obtaining funds are a tactic to make the new proposals seem attractive.

> We realize that the Minister has repeatedly stated that this legislation is optional. It is only optional for the bands who are not getting any funds from the Department of Indian Affairs. In reviewing the proposed legislative framework, only bands who have opted into the legislation will be available for increased funds for their administration. Divide and conquer again. It seems clear to us that the legislation is a form of blackmail to the bands dependent on the Department for their transfer grants. (Indian Association of Alberta, Sub 8:14)

THREE AREAS OF CRITICAL CONCERN

CHAPTER 3

THREE AREAS OF CRITICAL CONCERN

The discussion of the *Indian Act* and departmental policies illustrated some of the institutional obstacles to Indian control of their own affairs. Witnesses' responses to the band government proposal show that they reject the Department's proposed solutions to these problems. In conveying to the Committee their frustration with the current state of affairs, Indian witnesses gave convincing testimony about the importance of Indian control in areas central to the cultures of the First Nations. They asserted that in some cases only Indian control of legislation and policy would ensure the survival and development of Indian communities. Three areas of critical concern were education, child welfare and health.

Witnesses documented the damage to Indian cultures that has occurred in the past. Their description of the severe limitations of today's bureaucratic solutions made the need for fundamental change clear. By describing new projects—already underway despite all the restrictions—witnesses showed that Indian communities and organizations will take the initiative, and that immediate change is possible. After hearing the persuasive arguments documented in this chapter, the Committee developed its own recommendations, which it believes will deal with these areas of critical concern, among others.

Education

External control of the education of Indian children has been destructive of Indian culture. The early years of missionary and DIAND-operated residential schools were particularly condemned by witnesses.

> It was believed that by removing Indian youth from their homes and placing them in captive environments, the heart and soul of Indian culture would be removed, or a process of de-Indianizing the Indians. Specifically, residential school Indians were not permitted to speak their language, practise their religious beliefs and rituals, or have the opportunity to

learn what it means to be a self-actualized Indian. Rather, these institutions were highly regimented with programs and a school curriculum alien to its students. (Saskatchewan Federation of Indian Nations, Special 11:82)

While the disproportionate ratio of Indian children in care remains about the same today, it is important to note that the steady increases in provincial government child apprehensions occurred almost simultaneously with residential school closures. The effects of residential schools on this generation of parents must be taken into serious consideration since the Indian parents of today were the generation of residential school children yesterday. They're considered by their people as the lost generation. (Indian Homemakers of British Columbia, "Family Unit Concept", Exhibit R, Special 17)

The 1971 Sub-Committee on Indian Education of the Standing Committee on Indian Affairs and Northern Development found that federal, provincial and church schools alike had failed to educate Indian students. The report laid the foundation for federal acceptance of the National Indian Brotherhood paper, "Indian Control of Indian Education", which advocated Indian communities taking responsibility for their children's education through their own school boards. The policy was endorsed by the Minister of the day, the Honourable Jean Chrétien.

Since then, the Department has adopted a policy of Indian control of education, but Indian bands have discovered that their influence is still limited. The new arrangements have replaced the drastic unilateral measures of the past with bureaucratic systems that call on the resources of Indian communities but result in no real Indian control.

One limiting factor is the existence of master tuition agreements with the provinces that cannot be changed for many years.

It has been a little over 10 years since this policy was presented and accepted as the direction Indian education would proceed in. The principle of Indian control of Indian education is really given only lip service in the Province of British Columbia. The major portion of the education budget in the British Columbia region of the Department of Indian Affairs goes to the provincial government to honour an archaic contract known as the master tuition agreement. This agreement was signed in 1969 between the federal government and the British Columbia government without Indian involvement or consent. The Minister of Education for the province of British Columbia stated in 1979 that, regardless of any agreement, the provincial government will provide education services to status Indians, because this is their right as provincial citizens. (Saanich Indian School Board, Special 5:21)

Witnesses pointed out that they have very little control in those cases where funding is provided direct to provincial school boards. They also suggested that the system of funding whereby moneys were paid in a lump sum did not provide for sufficient accountability.

School District 88 is paid in full for all native students by October in every school year. They receive $3,205 for each registered native student, which includes transportation for bussing. At present we have 17 students attending from our village and many more off reserve. Our share to the school district presently is $54,485 for the year. The problem is that this is paid out in a lump sum. . .to School District 88 and by October a lot of the students are kicked out of the school and the school district has already received the total amount of funding. We disagree with that system. (Kitsumkalum Band, Special 7:64-65)

The Committee received further testimony on this subject. The Manitoba Indian Education Authority, for example, spoke about the difference between the per capita cost for an

Indian student at a public elementary school and the per capita cost for an Indian student at an Indian-run school. DIAND often pays a higher per capita rate to provincial schools than to Indian-operated schools. (Special 3:17)

Indians frequently participate in negotiations, only to be overruled by unilateral federal or provincial decisions, despite assurances that action is only to be taken "with Indian approval". The Union of New Brunswick Indians told the Committee that earlier this year the federal government and the province had gone ahead and signed an education agreement that was not acceptable to the Chiefs. (Special 23:11-12)

Finally, Indian witnesses referred to the absence of adequate representation on boards and advisory committees. In Ontario, for example, Indian representation on school boards is limited to two, regardless of the number of Indian students. (Special 14:17)*

In a paper tabled by the Saskatchewan Federation of Indian Nations, the Peepeekisis Indian Band documented sub-standard academic achievement and poor attendance at the local provincial school. The band attributed these difficulties to a number of factors, including the absence of Indian representation in the preparation of tuition agreements, the development of curricula and the delivery of services.

Many witnesses recognized and emphasized the need for education as a means of both recovering the cultural values and skills of aboriginal societies and acquiring the skills needed to survive and prosper in non-Indian society. Education programs operated by federal and provincial governments were seen as promoting a policy of assimilation.

> The principle is simple. Only Indian people can design systems for Indians. Anything other than that is assimilation. (Carrier-Sekani Tribal Council, Special 20A:11)

Indian control over education was seen as an essential component in strengthening Indian culture and preserving Indian heritage. During a visit to the Long Plain School in Manitoba, the Committee heard first-hand from the students about the development of a language program, visits by the elders to tell stories, and the native studies program:

> We would like you to know that we prefer our school here on the reserve mainly because we are among friends and relatives. We are in our own environment, among our own people... (Long Plain School, Special 2A:1)

Work has begun on native studies programs, but implementation varies throughout the country. Current laws and policies often prevent Indian organizations from carrying out their proposals for change:

> Right now, the big problem we are having with the school boards and Department of Education is that we would like to introduce a lot of curriculum material that is related to our culture and our background within the school system. We are being blocked from doing that by the school boards, by the denominational school board. (Conne River Indian Band Council, Sub 13:70)

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* The Ontario *Education Act* provides for the appointment of one representative of Indian pupils to a school board that has an agreement with a band council. A second representative may be appointed in cases where Indian pupils represent a certain percentage of average daily enrolment. (R.S.O. 1980, Chapter 129, Subsections 165(4)-(6) as amended.)

> We say that Indian education is to educate Indian people to be Indian people . . . So we say we need a new order of education which we define as "education to be Indian people." (Saskatchewan Indian Education Commission, Special 11:68-69)

Throughout the Committee hearings, witnesses provided examples of arrangements or structures that might be used to achieve their goals if new structures were in place.

> It is important, if native culture and native history are to be taught, for example, through education in the local schools, that that be part of the negotiation process. I think the best way to negotiate is to have the money in your hand and sit down, for example, with the local school board and agree upon the basic requirements for education, and then add a few of these cultural courses and so on that are needed for better understanding. (Central Interior Tribal Councils, Special 18:23-24)

This might mean that a tribal council would be empowered to act on behalf of a number of bands, or a special education authority would be created to look after the education needs of an Indian community. In some cases, Indian First Nations might wish to make agreements with the provinces, but would negotiate their own arrangements regarding funding and the inclusion of cultural and language studies. Central to this process is the principle that it is the Indian First Nation that should have jurisdiction over and responsibility for education.

As a result of the James Bay and Northern Quebec Agreement, the Grand Council of the Crees of Quebec is in a unique situation. The Cree School Board, which operates under the terms of the Agreement, is a good example of the innovations possible under new structures:

> The Cree School Board was created in order to implement the concept of Cree control of Cree education. It is a prime example of Indian self-control and determination and stands as a precedent in the field of Indian assumption of responsibilities previously directed by others. (James Bay Cree, Special 29A:36)

In this case, the Cree School Board has special powers "unequalled in other school boards across the land, and certainly beyond comparison with powers related to the administration of other Indian boards in Canada." (Special 29A:40) It exercises some of these powers in conjunction with the Quebec Department of Education. It has powers to decide on the language of instruction, choose the curriculum, select appropriate textbooks, hire teachers and control administration.

Even under the restrictions of the *Indian Act*, bands, and organizations exercising authority delegated by bands, have implemented some changes. One such organization is the Manitoba Indian Education Authority. Another, the Saskatchewan Indian Education Commission, also operates under delegated authority. Its organizational structure includes 69 education boards at the band level, seven district education councils and a 13-person executive board. (Special 11:73)

The Federation of Saskatchewan Indian Nations also provided several examples of institutions it had developed, including the use of Indian student residences as schools that "advocated and encouraged Indians to be Indians". (Special 11:82) These schools provide specialized studies in native culture, heritage and language. The Saskatchewan Indian College, also under the jurisdiction of the Federation, has as its purpose the revival and perpetuation of "Indian culture, traditions, history, language, religion and all aspects of the

Indian way of life". Finally, the Federation has worked with the University of Regina to create the Saskatchewan Indian Federated College, a college that is administratively independent but academically integrated with the University.

Looking to the future, the Carrier-Sekani Tribal Council presented a proposal for an Indian university that would use the talents of all the people in various villages in teaching:

> An Indian University having the human and financial resources will develop the plans, the direction and the blueprints that will transform the present situation of the Indian people to a people who have their own government. (Special 20A:11)

In summary, education is a central area in which Indian people wish to exercise jurisdiction. Witnesses emphasized the destructive nature of external control. Some Indian bands and organizations exercise a degree of control even now, but have achieved this only by stretching a restrictive framework to its limits. In order to pursue their goals, Indian people want real power to make their own decisions and carry out their own plans for Indian education.

Child Welfare

The imposition of non-Indian views of child care, through the enforcement of provincial child welfare policies on reserves, has had tragic effects on Indian family life.

A large number of Indian children are under the care of provincial child welfare authorities. A recent study, *Native Children and the Child Welfare System*, reveals that in 1955 approximately one per cent of the children in the care of child welfare authorities in British Columbia were of Indian ancestry. By 1964 this figure had risen to 34.2 per cent. Patrick Johnston, author of the study, referred to a practice known as the 'sixties scoop'; provincial social workers would scoop children from reserves on the slightest pretext in order to 'save' them from what social workers considered to be poor living conditions.*

Throughout the hearings, Indian witnesses condemned the policies of provincial welfare authorities for removing Indian children from reserves in cases where, in the opinion of the authorities, they were not being properly cared for by their parents. Witnesses criticized provincial authorities for judging situations by non-Indian standards, which are culturally different.

> The problems that have been encountered in the past by provincial social services have not only been conflicts of policy but also cultural conflicts. . . .Nothing illustrates this point better than the removal of Indian children by white social service agencies from Indian communities. Social service agencies now have the power to seize Indian children and put them up for adoption outside the Indian cultural environment. Such a practice is totally unacceptable. (Restigouche Band, Special 22:13)

> All the laws and regulations administered by the social welfare agencies and workers are based on a non-Indian concept of the family and intra-family relationships. When applied to Indian communities, they create problems rather than offer solutions, and often hinder rather than help as they are intended to do. (Shoal Lake Band No. 39, Special 1:81)

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* Patrick Johnston, *Native Children and the Child Welfare System* (Ottawa: Canadian Council on Social Development, 1983), p. 23.

Indian people see these practices as interference by the provinces in Indian affairs, contrary to the special relationship between Indian people and the federal government.

> We have had problems in the past dealing with child welfare and the fact that provincial [authorities] have always had the jurisdiction to come to Indian lands and apprehend any child, if they thought that child was being abused in any way within the band. . . . Taking charge of our own Indian government would mean that we should also be able to control our child welfare, and also eliminate the problem of having the MHR [provincial Ministry of Human Resources] come into our reserve to apprehend any children. (Treaty 8 Tribal Association, Special 21:35)

Others saw these policies and practices as means of assimilation.

> We want to see an end to federal policies which take away our children from their parents and from our communities. In British Columbia where I come from, 35 per cent of all children apprehended are from Indian or native families, and we comprise only 1 per cent of the population. (Native Women's Association of Canada, Sub 4:6)

> Each time an Indian child is spirited away from our reserves, family unity is being destroyed and we are being deprived of our future great leaders. . . Indian children. . .have an inalienable right to keep their parents. They have an inherent right to retain their language and culture. We do not condone the system that pirates away our children and even exports them to foreign lands. . . .We are saying this planned process of cultural genocide must cease. (Alberta Council of Treaty Women, Sub 10:19)

Jurisdiction over Indian child welfare has been the subject of much debate. As the *Indian Act* does not refer specifically to the delivery of child welfare services, and as the provinces normally have jurisdiction over child welfare matters, section 88 of the *Indian Act*, which refers to provincial laws of general application, comes into play. The federal government has also encouraged the provinces to deliver child welfare services.

Witnesses before the Committee discussed a number of interim arrangements that have been worked out under the existing legal framework. For example, in 1980 the Spallumcheen Band passed a by-law giving itself exclusive jurisdiction over any child custody proceeding involving an Indian child. In some cases, Indian bands or organizations have been able to reach agreements with the federal and provincial governments to share administration of child welfare services.

One of the first tripartite agreements relating to child welfare was signed by Canada, Alberta and the Blackfoot Band. Under its terms, the band administers the child welfare programs of the Alberta Department of Social Services and Community Health. Social services are delivered to band members by employees of the band's social services unit. A valuable component of the tripartite agreement is its provision of training programs.

In February 1982 the Canada-Manitoba Indian Child Welfare Agreement was signed establishing "the broad framework by which Indian communities in southern and central Manitoba will acquire authority and responsibility for child welfare".* This is a master agreement setting out a general structure. Subsidiary agreements will be signed that detail specific administrative and financial arrangements.

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* Johnston, *op. cit.*, p. 110.

Indian witnesses who spoke on the subject were virtually unanimous in their opinion that child welfare is an area over which Indian First Nations should exercise jurisdiction. The exact mechanisms for the delivery of services would vary throughout the country. As in the case of education, witnesses expressed interest in establishing their own services, contracting with tribal councils or negotiating agreements with provinces. In all cases, the key element was control by Indian people to ensure that their values and customs are respected.

> ...The Dene have some strong traditions in the area of family and child-raising, over which we want our people up here to have jurisdiction and be able to legislate from time to time. I do not think we would want to try to come up with legislation today that would be static for the next 30 years. Rather, we want to be self-determining, so we want jurisdiction here. (Dene Nation, Special 28:75)

> Young people are the hope and life-blood of our nations, and their removal strikes at the very heart of our culture and heritage. (Restigouche Band, Special 22:13)

Health Care

The shocking degree of ill-health among Indian people has been widely documented. Indeed, the federal Indian Health Policy of 1979 referred to the "tragedy of Indian ill-health" and presented ways to remedy this intolerable situation. Although the federal medical care program for Indians and Inuit has been extensive, involving significant sums of money for health services, Indian health has not improved to any great extent. The Report of the Advisory Commission on Indian and Inuit Health Consultation noted that the present situation is not the result of departmental neglect but rather is due to larger problems:

> Yet notwithstanding the dedication of MSB [Medical Services Branch] and its staff, and the expenditure of these sums, the grievous state of Indian health today is plain for all to see. The reason is that so many of the causes of Indian ill-health lie beyond the fact of illness itself, and the remedies lie beyond the mandate of MSB.*

The report went on to document conditions such as poverty, poor housing, lack of clean water, inadequate sewage and garbage disposal, and poor diet. Efforts to improve health must include improvements in these underlying conditions.

Responsibility for Indian health services is currently exercised by the Department of National Health and Welfare (NHW). At one time all health services were delivered through federal medical facilities established in all the provinces and territories, but gradually the federal government made arrangements with the provinces to deliver hospital services for Indians through the provincial hospitalization system. NHW continues to operate approximately 400 nursing stations and other health facilities.

In 1979 the federal government issued an Indian Health Policy designed to promote and encourage Indian involvement in the provision of health services. To demonstrate its commitment to this policy, the Department of National Health and Welfare began a process of devolution whereby many health services would be administered at the band level. At present over $20 million is provided to bands through contribution agreements for band-adminis-

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* The Honourable Mr. Justice Thomas Berger, *Report of Advisory Commission on Indian and Inuit Health Consultation* (Ottawa, 1980), p. 3.

tered health services. Indian witnesses were quick to point out, however, that the devolution of health programs did not include a transfer of control. Real power remained with NHW.

> Health care is a basic necessity. We are ready to implement health care services on reserves, but the federal government is not. New federal legislation should enable us to take control of this area. (Anishinabek Nation, Special 15:12)

The interrelationship between health care and other factors such as housing, community infrastructure and employment cannot be denied. An unhealthy child with low resistance to colds and infections is unlikely to do well at school. An alcoholic mother may bear a child suffering from fetal alcohol syndrome. Health, in particular preventive health care, is an essential component of many other programs and activities. A holistic approach is required. Indian communities would like to have the power to establish priorities, co-ordinate the overall planning, and control the process of health care.

> Our goals are to improve the health status of the Blackfoot Band with emphasis on preventive health; advocate and encourage health careers, professional or para-professional, among the young Blackfoot; establish a tribal health planning process—that is taking place now; initiate a comprehensive communications system; establish rapport within and among all sectors. I would underline that word *rapport*, because this is something that not too many sectors talk about. Rapport means to exist in harmony. (Blackfoot Band, Sub 8:85)

> Health has a less tangible dimension, not demonstrable by death or disease statistics, yet just as real and possibly more important. It is 'whole health', involving spiritual, social, and mental aspects of the life of the individual and the community. It is 'health as strength'... as togetherness, as harmony with the universe, as self-esteem, pride in self and group, as self-reliance, as coping, as joy in living... (W.G. Goldthorpe, report tabled by Kwakiutl Tribal Council, Special 5)

Health and Welfare officials also supported a holistic approach:

> I think a healthy community is one that looks at itself in a rather comprehensive and holistic way, and that the concept that by more medicine we can improve the indices of health has its limitations. I think we are firmly committed to the view that real improvements, dramatic improvements in the health of many native communities, have to come about as a result of a multiplicity of things: as a result of improvement in the employment situation, improvement in the economic situation, improvement in the housing situation, improvement in the community infrastructure. We do not think we can improve those very tragic statistics solely by the application of contemporary medicine. The renewal has to come from within. (Sub 6:37)

The provision of health services is an area where the importance of traditional practices must be emphasized. The Chiniquay Band, for example, expressed concern that health services on the reserve have a corporate organizational structure that "is foreign to our traditional 'clan' social structure, and therefore causes family conflicts". (Written Submission) The importance of traditional medicine was pointed out by NHW officials and others.

> It is clear that the Kwawkewlth people were a lot healthier before this last century. Their health has declined with suppression of their language and culture, with the anti-potlatch laws... Their health has declined with the death of the last Kwawkewlth medicine man, with the forgetting of the healing powers of the herbs and barks around them. (W.G. Goldthorpe, report tabled by Kwakiutl Tribal Council, Special 5)

> We have come to appreciate very much the relevance and the utility of traditional approaches, particularly to mental health problems—approaches which address the suicide

> rate, approaches which address addiction problems. We believe that in areas such as those the application of traditional medicine and native culture perhaps can be more successful than anything we could offer in terms of contemporary psychiatric approaches to those kinds of problems. (Department of National Health and Welfare, Sub 6:29-30)

Unlike the testimony on education and child welfare, where possible systems for delivering services were described, witnesses did not specify how health care services should be provided. The emphasis was on control of the system rather than designing new systems. Indian witnesses emphasized that, as a guiding principle, Indian First Nations should have flexibility in establishing arrangements for the delivery of services in general. This could involve negotiating with provinces or private enterprises to provide the actual services or providing them themselves. Control would remain with the Indian First Nation.

Several Indian First Nations have already taken steps to assume control over health matters. The Alberta Indian Health Care Commission was established in 1980 to act as a province-wide board of Indian health. The Cree Board of Health and Social Services, set up pursuant to the provisions of the James Bay and Northern Quebec Agreement, was created so that the Cree would have local and regional control of health and social services. But, as noted earlier, ill-health is not an isolated issue that can be resolved with more and better medical facilities. Through the exercise of Indian self-government Indian people will be able to control the other problems to which ill-health is linked, in this way improving the state of Indian health.

In summary, many witnesses asserted that there are matters that must be controlled by Indian communities to ensure their cultural survival. Jurisdiction over such areas as education, child welfare and health is considered essential. By exercising control over these matters, Indian people could ensure that future generations were able to preserve and enjoy their culture and heritage. The balance of this report is devoted to recommendations that will help to create the conditions under which these goals can be achieved.

SELF-GOVERNMENT FOR INDIAN FIRST NATIONS

CHAPTER 4

SELF-GOVERNMENT FOR INDIAN FIRST NATIONS

The First Ministers' Conference on Aboriginal Constitutional Matters, held in Ottawa in March 1983, marked an important step toward the recognition of Indian First Nations in the Canadian Constitution. As Prime Minister Trudeau observed in his opening statement:

> Clearly our aboriginal peoples each occupied a special place in history. To my way of thinking, this entitles them to special recognition in the Constitution and to their own place in Canadian society, distinct from each other and distinct from other groups who, together with them comprise the Canadian citizenry.

The Committee fully endorses the Prime Minister's remarks. The Committee further believes that special and distinct recognition can best be manifested by Indian First Nation governments having a unique place in the Canadian political system and the Constitution.

The Need For A New Relationship

For thousands of years prior to European immigration, North America was inhabited by many different self-governing aboriginal peoples, speaking many languages and having widely differing cultures and economies. The Royal Proclamation of 1763, which formalized British colonial policy for North America, recognized this situation.

Over the years, however, the initial relationship between Indian people and the British Crown changed. In the evolution of Canada from colonial status to independence, the Indian peoples were largely ignored, except when agreements had to be made with them to obtain more land for settlement.

The Indian peoples played no part in negotiating Confederation, or in drafting the *British North America Act* of 1867 which, under section 91(24), assigned legislative authority

with respect to "Indians, and Lands reserved for the Indians" to the federal government. The government assumed increasing legislative control over Indian communities, leading to *The Indian Act, 1876*, which, with minor modifications, remains in effect today. The result, over the years, has been the steady erosion of Indian governmental powers.

Under the *Indian Act*, traditional Indian governments were replaced by band councils that functioned as agents of the federal government, exercising a limited range of delegated powers under federal supervision. The *Indian Act* also failed to take into account the great diversity of Indian peoples and cultures and treated all Indians in Canada as a homogeneous group. These two features of the Act prevail today.

The Committee's extensive inquiry has confirmed that the current relationship between Indian peoples and the federal government is unsatisfactory. Witness after witness spoke of a "legacy of injustice, exploitation, bureaucratic insensitivity and non-Indian self-interest". (Special 5:63)

In Chapters 2 and 3 we showed that despite many well-meaning attempts to improve the relationship, most Indian communities across Canada are characterized by abject poverty, malnutrition, poor health, high infant mortality rates, minimal education, and economic under-development. Chief David Ahenakew, National Chief of the Assembly of First Nations, testified that "current federal policies and institutions are operating to reinforce Indian poverty and dependence, rather than to promote self-sufficiency and self-determination. This course has taken an appalling toll in both human and financial terms." (Sub 3:5)

Indian First Nation witnesses argued that far-reaching change was needed, change that would amount to an entirely new relationship.

> We could talk about inadequate housing, sewer systems, and fire protection well below Canadian standards. We could talk about the lack of economic development and high unemployment rates in our communities. We could talk about the specifics of government programs, policies and regulations. We could talk about how the energy and talent of Indian communities are drained and wasted, reacting to the self-perpetuating bureaucracy of your government.
>
> However, we are not here to talk about the potholes on the road to self-government, which we can best pave ourselves with the jurisdictional authority to do so. We wish to put forward suggestions for creating a new order in the Canadian/aboriginal relationship. (Nishga Tribal Council, Special 7:34)

Thoughtful and knowledgeable non-Indian observers have come to similar conclusions. Speaking in 1974, Dr. Lloyd Barber, at that time Commissioner of Indian Claims, said:

> . . .Native people are seriously talking about a distinctly different place within Canadian society, an opportunity for greater self-determination and a fair share of resources based on their original rights. No doubt this will require new and special forms of institutions which will need to be recognized as a part of our political framework.

The 1979 report of the Pepin-Robarts Task Force on Canadian Unity, *A Future Together*, also pointed to the need to act:

> It is now appropriate that specific attention be paid to the issue of the constitutional position of the first Canadians. More specifically, both provincial and federal authorities should pursue direct discussions with representatives of Canada's Indians, Inuit and Métis,

with a view to arriving at mutually acceptable constitutional provisions that would secure the rightful place of native people in Canadian society.

While this kind of awareness is not shared by Canadians generally, a witness drew the Committee's attention to the "dramatic change in the last few years".

> [The report of the] Mackenzie Valley pipeline inquiry in 1977 discussed the concept of Indian self-determination and called for a social contract between the Indian nations and the political institutions of Canada. Since then, the need for the special constitutional provisions on aboriginal rights and title has been recognized by the Canadian Bar Association in their report, *Towards a New Canada*; by the Pepin-Robarts task force on national unity; by the Quebec government's white paper, *Quebec-Canada: A New Deal*; and by the Quebec Liberal Party proposal, *A New Canadian Federation*. In February 1979, the Prime Minister and the provincial premiers agreed that the Indian peoples had to be considered in a process of constitutional change. They agreed to add a new item to their agenda: Canada's native peoples and the Constitution. On September 28, 1979, Prime Minister Clark agreed that the National Indian Brotherhood would have a full, equal and ongoing role in federal-provincial discussion on that agenda item. In March of this year [1983] a First Ministers' Conference will convene to discuss the definition of indigenous aboriginal nations' aboriginal and treaty rights. (Bella Coola District Council, Special 6:80)

Indian peoples in Canada must control their own affairs. A new relationship is urgently needed that respects the diversity, the rights and the traditions of Indian First Nations.

> I think the message. . .is to make absolutely sure. . .we are talking about relationships that respect the traditions and culture of those people. . .without trying to impose on them some kind of non-Indian relationship. If we can do that on the basis of mutual respect and trust, then I think we have gone half way to solving a lot of the problems we have. (Native Council of Canada, Sub 7:9-10)

A new relationship would be beneficial to Canada; it would eliminate the tensions, the inefficient use of funds and the unacceptable social conditions that keep Indian peoples from contributing to the country's progress. In a democratic age, it is incongruous to maintain any people in a state of dependency. The federal government, particularly as represented by Department of Indian Affairs and Northern Development, would no longer find itself in a conflict of interest situation, being called upon to defend Indian interests while also being expected to represent the federal position.

Indian people would likewise benefit from a new approach. Ending dependency would stimulate self-confidence and social regeneration. Instead of the constant and debilitating struggle now faced by band councils, which are expected to administer policies and programs imposed by the Department of Indian Affairs, Indian First Nation governments would get on with the business of their own governmental affairs. Self-government would also simplify the political position of Indian leaders, who are now caught between the demands of their electors and those of the federal government, which funds their programs.

1. The Committee recommends that the federal government establish a new relationship with Indian First Nations and that an essential element of this relationship be recognition of Indian self-government.

Many witnesses emphasized that, in seeking to establish Indian First Nation governments, they did not wish to create divisions that would weaken Canada. Their object is to change the relationship of Indian First Nations to other governments, not to fragment the

country. In their opinion, the exercise of political self-determination is a necessary step toward national unity. Canada would be strengthened, not weakened as a result.

> There must be unity, if you will, or cohesiveness in this country. There must never be any dismemberment of the country. I do not want to get into these western separatists, or Quebec separatists, or any separatists in the country. I can assure that you we will fight that. We do not want our country to be dismembered. Just because what we are talking about is separate, putting into place a separate order... that does not mean that we are going to change the nature of this country. Certainly we are going to change the nature of law-making, administering, policy-making, and so on.
>
> Yes, the provinces must become involved—not because the Constitution says so, but because of the very nature of the way in which this country is structured. We can say that the Constitution compels us to have the provinces participate and be involved every step of the way... But that is not the real reason, in our opinion. The reason is because they have governments within the provinces or territories, therefore, they too must change their laws, their practices, to accommodate ours; and it must be done fairly... We do not have any hang-ups right across the country about the very thing that we are discussing now. (Assembly of First Nations, Sub 3:28)

International Experience

To determine whether the experience of other countries with indigenous populations could be helpful to Canada, the Committee commissioned research on international policy and practice. The study concluded that arrangements in other countries have not generally provided opportunities for genuine self-government by indigenous peoples. No international models were found that would be readily transferable to Canada.*

Some aspects of the relationship between Indian tribes and the United States government, however, were of particular interest to the Committee. Early judicial rulings in the United States recognized the sovereignty of Indian nations and the fact that it stemmed from their own independence, not from the delegation of power by any external government. Tribes were described as "domestic dependent nations" and retain to this day some sovereign powers of self-government. The legal tradition in Canada is very different.

To gain a better understanding of this relationship, the Committee travelled to the United States to meet with U.S. government officials and Indian leaders. Just prior to the Committee's visit, President Ronald Reagan issued a statement on Indian policy, which read in part:

> When European colonial powers began to explore and colonize this land, they entered into treaties with sovereign Indian nations. Our new nation continued to make treaties and to deal with Indian tribes on a government-to-government basis. Throughout our history, despite periods of conflict and shifting national policies in Indian affairs, the government-to-government relationship between the United States and Indian tribes has endured. The Constitution, treaties, laws, and court decisions have consistently recognized a unique political relationship between Indian tribes and the United States which this Administration pledges to uphold.

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* Greenland does, however, offer some possibilities as a model for the Eastern Arctic.

While the tone of this pronouncement contrasts sharply with Canadian policy, the Committee learned that in practice Indian people in the United States face many of the same problems experienced by Indian people in Canada.

The Committee was interested in the work of such U.S. Indian organizations as the Council of Energy Resource Tribes and the American Indian National Bank. (See Appendix G for a complete list of organizations with which the Committee met during its visit.) A visit to several pueblos in New Mexico, including the opportunity to observe a meeting of the Eight Northern Indian Pueblos Council, enabled the Committee to see a unique Indian governmental system in operation in the United States today. The development of Indian law and the advocacy of Indian interests before the courts—supported by the Institute for the Development of Indian Law, the Native American Rights Fund, and the Indian Law Resource Center—have had a notable effect on recent judicial rulings concerning Indian rights. These initiatives have helped to improve the situation of Indian people in the United States. The Committee gained valuable insights from its visit but concluded that Canada must develop its own approach.

Establishing Self-Government

In considering a new relationship, the Committee found itself at the beginning of a process with the potential for significant change. Current legal assumptions offer an inadequate basis for the new relationship. Band councils do not form part of the constitutional structure in the same way as federal and provincial governments do. They exercise only those powers permitted by the *Indian Act*. According to traditional constitutional interpretation prior to the recognition and affirmation of "existing aboriginal and treaty rights" in the *Constitution Act, 1982*, all primary legislative powers were deemed to be vested either in Parliament or in provincial legislatures. The inclusion of existing aboriginal and treaty rights in the Constitution may have altered this situation. If, as many assert, the right to self-government exists as an aboriginal right, there could be a substantial re-ordering of powers. Indian governments may have implicit legislative powers that are now unrecognized.

Many Indian witnesses asserted that rights implicitly recognized in the Royal Proclamation of 1763 and in the treaties provide a basis in law for true Indian governments to be recognized by the Canadian government and for Indian people to exercise their inherent right to self-government. The Royal Proclamation formalized the process through which the British people and authorities were to relate to Indian nations and tribes. In so doing, it recognized aboriginal title and rights to the land and placed limits on the way colonial governments could secure land for settlement. Witnesses argued that the Proclamation also implied recognition by the Crown of autonomous Indian governments. Judy Sayers, speaking for the Canadian Indian Lawyers' Association, asserted that

> an inherent right [to self-government] was preserved in the Royal Proclamation of 1763 and acknowledged by Lord Denning.* . . .Any rights or freedoms recognized by the Royal Proclamation of 1763 are now guaranteed in the *Constitution Act, 1982*, section 25.

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* Lord Denning, Master of the Rolls, is an English judge who heard an important case brought in the Court of Appeal of England by the Indian Association of Alberta, the Union of New Brunswick Indians and the Union of Nova Scotia Indians in 1982 prior to patriation of the Constitution.

She concluded with the statement, "There is in law and history a definite basis for self-determination and self-government." (Sub 13:6)

The critical importance of the Royal Proclamation has been affirmed by the courts. As Mr. Justice Hall stated in the case of *Calder* v. *Attorney General of British Columbia* (1973):

> This Proclamation was an Executive Order having the force and effect of an Act of Parliament and was described. . .as the "Indian Bill of Rights". Its force as a statute is analogous to the status of Magna Carta which has always been considered to be the law throughout the Empire. . . .The Proclamation must be regarded as a fundamental document upon which any just determination of original rights rests.

The Indian Association of Alberta submitted a legal opinion by Professor E.P. Mendes entitled "Are There Constitutional and Inherent Rights of Indian Self-Government?". It noted that "the Assembly of First Nations and the Indian Association of Alberta believe that their right to Indian self-government is first and foremost protected by the Royal Proclamation." It went on to interpret Lord Denning's judgement in the following terms:

> Lord Denning. . .seemed to infer that the colonising British authorities seemed to have recognized this inherent right of self-government by traditional and customary laws of the native peoples even at the time of the passing of the Royal Proclamation of 1763, and that the Royal Proclamation recognized the right of the native peoples of British North America to govern themselves by their own traditions and customary laws. (Sub 11A:6)

The opinion concluded with this assessment: "The native peoples of Canada could put a persuasive case forward that there is an inherent right of native self-government on Indian lands". (Sub 11A:15)

The *Constitution Act, 1982* clearly represented a forward step by recognizing and affirming existing aboriginal and treaty rights. But it did not define those rights. Lord Denning recognized the value of constitutional entrenchment but also noted the importance of holding the Constitutional Conference provided for in section 37 of the Act, as this was a process through which aboriginal and treaty rights could be defined more clearly. It might well be argued that it is not the rights of Indian people that are ill-defined, but the recognition of these rights in Canadian law that has been ill-defined.

The definition of these rights has already been the subject of one Constitutional Conference (Ottawa, March 15-16, 1983). In the 1983 Constitutional Accord on Aboriginal Rights, the product of that Conference, the participants agreed to hold further conferences to discuss constitutional matters directly affecting the aboriginal peoples of Canada, *including self-government.*

2. The Committee recommends that the right of Indian peoples to self-government be explicitly stated and entrenched in the Constitution of Canada. The surest way to achieve permanent and fundamental change in the relationship between Indian peoples and the federal government is by means of a constitutional amendment. Indian First Nation governments would form a distinct order of government in Canada, with their jurisdiction defined.

A constitutional amendment would, however, require the approval of the federal government and seven provinces constituting 50 per cent of the population. Since the constitutional

process may be protracted, the Committee considered other courses of action for achieving Indian self-government: the courts, the bilateral process and legislative action.

The Courts

The Committee considered the usefulness of a judicial ruling to establish whether self-government is an existing aboriginal right and therefore a right of Indian First Nations in Canada.

The courts may eventually rule on this issue. An Indian First Nation government might assert jurisdiction as against the federal or a provincial government and seek to have its right to exercise that jurisdiction challenged in the courts. The issue might also arise peripherally in another case. Obtaining a judgement in the Supreme Court of Canada is a very lengthy process. The fundamental issue may not be directly addressed. In any event, a single court ruling could not define the full scope of Indian government or even design a new structure accommodating Indian government, although it might provide some impetus to political action. Clearly, it is an option that Indian First Nation governments might pursue, and they are free to do so. But the Committee regards this procedure as difficult to execute and uncertain in its outcome.

The Bilateral Process

It was strongly argued before the Committee that an Indian order of government already exists in Canada; that the federal government already has the authority to recognize Indian First Nations as self-governing entities without constitutional change; and that through bilateral discussions, jurisdictional arrangements could be agreed to between the federal government and Indian governments.

> The proper way to define and establish relations between our Indian governments and the rest of Canada is not through legislation or constitutional amendments, but by a basic political agreement, a covenant or social contract. A basic compact will respect the principle of the equality of peoples. It can be an integral part of the Canadian Constitution while it serves as a constitution confederating Indian nations in Canada. But as a social contract it cannot be changed without the consent of both sides. As a part of the constitutions of both parties, each side will be required by Canadian law, by traditional aboriginal law and by international law to respect its terms. (Bella Coola District Council, Special 6:81)

The treaty-making process provides both the basis of, and a model for, the bilateral process. In the Indian view, treaties guaranteed the right to self-government:

> The right to Indian government was guaranteed by our ancestors under the spirit and intent of the treaties. Treaty No. 4 of 1874 stipulated that the Indian way of life would not be changed but would survive in perpetuity. International law and basic principles of human rights recognize that for a way of life to survive the people concerned must have the right to develop politically in any direction they choose. This treaty guarantee acknowledges the inherent right to self-government, which flows from the choice of the people. (Starblanket Band, Special 11:9)

Witnesses also pointed out that the Royal Proclamation of 1763 recognized the existence of Indian governments and nations in its reference to "the several Nations and Tribes with whom We are connected and who live under Our protection".

The treaty-making process also provided a direct government-to-government link between the Crown and Indian peoples. This, in the Indian view, was confirmed by the setting aside of "Indians, and Lands reserved for the Indians" in a unique manner when the *British North America Act* was passed in 1867. They therefore viewed the passage of sucessive *Indian Acts* as a misinterpretation of federal authority. Instead of continuing to enter into agreements with Indian nations, the federal government legislated over them and imposed restrictions on them.

Witnesses asserted that the treaty-making process could be revived, and that the federal government and Indian First Nations could make all necessary arrangements by agreement. Therefore the bilateral process was seen by some as the preferred route to self-government. No legislation and no further constitutional change would be required to proceed in this manner.

Certainly, the federal government continued to use the treaty process until well after World War II. For example, it accepted adhesions to Treaty 6 in 1950, 1954 and 1956. Treaty-making also implies recognition of Indian political structures. One drawback to relying on the treaty-making process, however, is that the courts, at least in earlier judgements, usually described the treaties as 'contracts' and not as the equivalent of legislative or constitutional documents.

Parliament has not attempted to exercise the full range of its powers under section 91(24), which sets apart "Indians, and Lands reserved for the Indians". Consequently, the limits of these powers have not been established. In the past, Parliament has, through the *Indian Act*, legislated in a manner that has regarded Indian communities as less than municipalities. On the few occasions where it has legislated in a more wide-ranging manner—for example, with respect to liquor, which is a provincial responsibility when not related to Indians—the courts have upheld the exercise of its powers.

The recognition and affirmation of "existing aboriginal and treaty rights" of Indian peoples in Section 35 of the *Constitution Act, 1982* changed the constitutional position of Indian First Nations, but the implications of the change are not yet clear. The affirmation of the special relationship and the reference to a bilateral process in the 1983 Constitutional Accord are further important developments in relations between Indian First Nations and Canada.

3. While the Committee has concluded that the surest way to lasting change is through constitutional amendments, it encourages both the federal government and Indian First Nations to pursue all processes leading to the implementation of self-government, including the bilateral process.

Legislative Action

In its Order of Reference, the Committee was asked particularly to consider "legislative and administrative change". The Committee gave careful consideration to legislation as an interim solution that would permit speedy action and might enhance the prospect for eventual constitutional change.

Proposals for Legislation Presented to the Committee

The Minister of Indian Affairs presented a discussion paper called *The Alternative of Optional Indian Band Government Legislation*. These suggestions for new legislative and administrative arrangements and witnesses' reactions to them were discussed in Chapter 2.

The Committee's assessment is that the DIAND approach would be unacceptable as the basis of a new relationship for a variety of reasons. First, it was described by the Minister, and perceived by the witnesses, as a revision within existing arrangements which have been found to be unsuccessful and limiting; it is a further extension of 'devolution', which has been rejected. The proposal envisages Indian governments as municipal governments and fails to take account of the origins and rights of Indian First Nations in Canada. A major objection is that permission to opt in would be a favour granted to bands that the Minister of Indian Affairs, in his discretion, deemed to be sufficiently "advanced". The paternalistic role of the Department would be maintained.

4. The Committee rejects the Department's band government proposal. Although there have been years of consultation, there was no general agreement of Indian representatives, and the proposal finally emerged from a unilateral government decision.

Several bands and organizations made constuctive and creative suggestions for legislative change. In some cases, these proposals were based on the *Indian Act*. For example, the Union of New Brunswick Indians proposed increasing the powers of band chiefs and councils and removing all possibility that provincial laws would apply on reserves, but otherwise leaving the *Indian Act* intact. (Special 23:9) The Sawridge proposal outlined a complete revision of the Act, greatly increasing the powers of the Chief-in-Council, vesting all assets in the Chief-in-Council in trust for the use and benefit of the band, and revising the membership provisions. (Sub 11:14-16) Many other bands and organizations explicitly rejected any "tinkering with the *Indian Act*".

While the proposed amendments to the *Indian Act* would make much-needed improvements, the Committee believes that a more far-reaching approach, including legislation totally different from the *Indian Act*, would accommodate the special concerns of all groups. Legislation such as the Committee is proposing could be implemented quickly and should benefit all bands.

5. The Committee does not support amending the *Indian Act* as a route to self-government. The antiquated policy basis and structure of the *Indian Act* make it completely unacceptable as a blueprint for the future.

Witnesses also discussed entirely new proposals that they had developed to meet their particular needs. The Sechelt Band presented draft enabling legislation that would permit bands that met certain criteria (demonstrated administrative capacity, appropriate structures and practices, experience and readiness) to opt out of the *Indian Act* and operate under a band charter that would have the force of law for that band. This approach had the explicit support of a few band councils appearing before the Committee, since it would allow early relief from the limitations on their powers and jurisdiction imposed by the *Indian Act*. The Committee understands the objectives of the Sechelt Band and suggests that the proposal for legislation outlined in the next few pages would meet these objectives and, in fact, go much further.

The Grand Council of the Crees described recent negotiations leading to a proposed Cree-Naskapi Act, as a follow-up to the James Bay and Northern Quebec Agreement. They emphasized the importance of this legislation to Cree self-government, but stressed that the draft represents "Cree aspirations and the Cree position". (Special 29:57) There was no implication that this legislation should be a model. On the contrary, they made it clear that they explicitly rejected departmental assumptions that this proposal would be used as a model for self-government legislation, although other Indian First Nations would be free to adopt appropriate elements:

> There has been a tendency on certain occasions during the discussions to make reference to the application of what we are talking about to other areas, other bands, and the problems that would entail: the precedents being set, the difficulties faced by the Department if the same regimes, the same rights, the same structures were applied elsewhere. We have been, I think, very consistent on that in reminding the Department that this is special legislation being enacted in virtue of section 9 of the James Bay and Northern Quebec Agreement. That is what it is. It is not amendments to the *Indian Act*. It should have no direct impact on other Indian people. (Special 29:86)

The Committee also had before it several proposals for a series of subject acts—for example, an Indian Education Act, an Indian Child Welfare Act, and an Indian Corporations Act. On a national basis, this approach would require passage of numerous pieces of complex legislation. The resulting legal framework might be too restrictive to meet the diverse needs of Indian First Nations. While acknowledging that they could be useful guidelines for Indian First Nations developing legal codes, the Committee rejects the use of a series of subject acts as the basis for Indian self-government.

The Committee supports the objectives of all these bands and organizations and recognizes that their different approaches represent specific ways to escape from unsatisfactory current situations. Their efforts showed the potential for innovative solutions designed to meet specific needs. Within the approach suggested by the Committee, all such proposals could form the basis of new arrangements for these groups.

6. The Committee is convinced that any legislation that could apply generally must offer a framework flexible enough to accommodate the full range of governmental arrangements that are being sought by Indian First Nations.

Is Legislation Necessary or Useful?

Many witnesses opposed any legislation prior to the recognition of self-government and/or the settlement of land claims or treaty matters, believing that such legislation would be restrictive rather than expansive. The Committee recognizes the validity of these concerns and has taken them into account in proposing legislation as an important part of the process of federal recognition of Indian governments in Canada and, ultimately, of constitutional entrenchment.

A broad framework of general principles would appear to be the only model that would both permit consensus to be achieved and be flexible enough to accommodate a great diversity of arrangements, ranging from those set out by the Sechelt Band to those based on traditional laws and customs. Not only would Indian self-government be enhanced, but the spe-

cial relationship of the federal government with Indian peoples, and any residual federal responsibilities to them, would be reaffirmed.

No specific recommendations can be made without going contrary to the spirit of a new relationship. The Committee believes that its proposals would permit both the federal government and Indian peoples to build toward strengthened Indian governments. The Committee wishes to emphasize, however, that the only acceptable approach to legislation is that it be developed jointly by designated representatives of Indian First Nations and the federal government. It must be the responsibility of the First Nations themselves to select a method of designating representatives to negotiate on their behalf.

The New Context for Legislation

Under section 91(24) of the *Constitution Act, 1867*, Parliament has exclusive power to legislate in relation to "Indians, and Lands reserved for the Indians". The power is exclusive but not unfettered. Parliament's actions are limited by the recognition and affirmation of existing aboriginal and treaty rights.

In his decision in the Indian Association of Alberta case, Lord Denning discussed the rights guaranteed to Indians and the constraints on Parliament resulting from these guarantees. After noting the protection of rights in the new Constitution, and the importance of defining these rights more clearly, he went on to say:

> There is nothing, so far as I can see, to warrant any distrust by the Indians of the Government of Canada. But, in case there should be, the discussion in this case will strengthen their hand so as to enable them to withstand any onslaught. They will be able to say that their rights and freedoms have been guaranteed to them by the Crown—originally by the Crown in respect of the United Kingdom—now by the Crown in respect of Canada—but, in any case, by the Crown. No Parliament should do anything to lessen the worth of these guarantees. They should be honoured by the Crown in respect of Canada "so long as the sun rises and the river flows". That promise must never be broken. (p. 99)

Any proposed legislation must therefore be cognizant of aboriginal and treaty rights and take account of the process of defining them further, since legislation must conform to constitutional standards.*

With respect to Indians, the *Constitution Act, 1982*, recognizes and affirms their existing aboriginal and treaty rights (s. 35) without defining what those rights might be. Constitutional matters directly affecting aboriginal peoples have been the subject of one Constitutional Conference, and there will be future conferences to discuss these matters. This is the "ongoing process".

In addition, the guarantee of rights and freedoms in the Canadian Charter of Rights and Freedoms is not to "be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to aboriginal peoples", including any rights or freedoms recognized by the Royal Proclamation of October 7, 1763 (s. 25 of the Charter).

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* "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution, is, to the extent of the inconsistency, of no force or effect." (*Constitution Act, 1982*, s. 52(1))

The Constitutional Accord puts self-government on the agenda for discussion at future constitutional conferences. The Prime Minister alluded to possible new constitutional arrangements for self-government by aboriginal peoples; Indian groups take the very strong position that the right to self-government forms a part of aboriginal rights and must be recognized. Legislative proposals must be forward-looking, designed to set appropriate long-term policy. It can therefore be argued that both the procedures and the substance of the conferences on aboriginal rights should have a bearing on any proposed legislative action. In the meantime, policies and legislation should be brought forward that will further self-government.

7. The Committee recommends that the federal government commit itself to constitutional entrenchment of self-government as soon as possible. In the meantime, as a demonstration of its commitment, the federal government should introduce legislation that would lead to the maximum possible degree of self-government immediately. Such legislation should be developed jointly.

The Committee is proposing a means through which the people of a First Nation might have their government recognized. The entire process should be worked out in negotiations between federal government representatives and designated representatives of Indian First Nations, leading to an arrangement that would, for greater certainty and clarity, be set out in legislation. The outlines of the proposal follow, beginning with a discussion of the basic political unit.

STRUCTURES AND POWERS OF INDIAN FIRST NATION GOVERNMENTS

CHAPTER 5

STRUCTURES AND POWERS OF INDIAN FIRST NATION GOVERNMENTS

The Starting Point

Before the arrival of European settlers in Canada, Indian tribes, nations and confederacies occupied virtually the whole territory, with boundaries defined and confirmed by custom and treaties. Within nations, families were grouped together in villages, towns, clan units and bands. As settlers spread across the country and occupied the land, Indian nations were broken up into smaller units separated one from another, and their economies were disrupted. In the late nineteenth century, these units were defined as 'bands', and a governmental system of 'band councils' was prescribed for Indian communities by the federal government in the *Indian Act*. Bands are now the only Indian political unit recognized in Canadian law.

Witnesses were all agreed that the movement toward self-government must begin with the band.

> The primary political unit of Indian government is the band... through which flows the authority to govern and implement all powers of political autonomy through a true and democratic process. (Federation of Saskatchewan Indian Nations, Special 11:8)

> I think it is safe for the Committee to think initially of each individual 'band', as the *Indian Act* calls them, as a 'First Nation'. (Assembly of First Nations, Special 9:10)

Accordingly, the Committee concluded that the band has to be regarded as the point at which to begin the process leading to self-government.

Witnesses also insisted that there be flexibility. Testimony indicated that some bands will look to their original nation to constitute the primary political unit. In a few instances, where different peoples have been brought together to form one band, a band may separate into two or more units.

8. In the transition from the *Indian Act* to self-government, the Committee recommends that the starting point be the band, with its membership newly defined. The federal government should leave it to each band to decide whether its people would constitute themselves as an Indian government, or would join with others to form an Indian government of which the band would be a part.

Membership

Band membership has for many years been determined not by Indian people but by federal standards, which have excluded some people who properly belong. In the process of constituting a First Nation, the true community identified with the band must be consulted. Although the primary unit would therefore be based on current band groupings, restrictive *Indian Act* definitions of membership would be inappropriate in the context of self-government. The number of people involved in the process would be greater than the present membership through the inclusion of some people now excluded from membership by the operation of the Act.

Witnesses were unanimous that each Indian First Nation government should determine its own membership. The *Indian Act* now contains detailed and complicated provisions defining membership in an Indian band. Enforcement of these provisions frequently means that people who do not meet these criteria must move away from the community, thus leading to the loss of cultural identity by subsequent generations. It has been argued that control over membership is not only a right, but that it is also essential to ensure cultural, linguistic and ethnic survival.

While the general thrust of testimony concentrated on the right of each First Nation to determine its own membership, opinions differed as to whether Indian governments should, prior to establishing membership regulations, be required to reinstate people who have been removed from band membership by the operation of the *Indian Act*. Witnesses representing the Native Women's Association of Canada and the Native Council of Canada advocated this position:

> [Our basic position is that] . . . Indian governments determine their own membership, but only after all of those so titled have been listed or relisted on their respective band lists. (Native Women's Association of Canada, Special 33:8)

> The Native Council of Canada will continue its role of pressing for the rights of the non-status Indians and in cases where this situation [loss of status] has been created by the *Indian Act*, that reinstatement be automatic, upon the choice of the individuals, families or bands so affected.
>
> Only after this has been provided for do we fully subscribe to the principle that it is up to each Indian government, traditional or legislative, to determine its own membership. Again, this reservation is only with respect to Indian persons, individually or collectively, who have lost status because of the *Indian Act*. (Native Council of Canada, Sub 7A:9)

Representatives of Indian band governments rejected any federal intervention in the matter of reinstatement.

> It is up to the Indian governments across the country to resolve that and to put into place some just means of making sure that there is reinstatement or whatever it is they want to do. (Assembly of First Nations, Special 3:31)

The following procedure might be adopted by Indian First Nations to determine membership or citizenship:

1. The people in each community would begin with the *Indian Act* list, plus those who might be reinstated by any changes in legislation.

2. These people would get together to ask who might be missing and to include those they wished to include.

3. These people would agree on membership criteria and thus decide who else might be included or excluded. The criteria should be in accordance with the standards in international covenants concerned with human rights.

4. These same people would agree on appeal procedures and mechanisms.

5. The whole group would then determine their form of government and apply for recognition.

9. The Committee asserts as a principle that it is the rightful jurisdiction of each Indian First Nation to determine its membership, according to its own particular criteria. The Committee recommends that each Indian First Nation adopt, as a necessary first step to forming a government, a procedure that will ensure that all people belonging to that First Nation have the opportunity of participating in the process of forming a government, without regard to the restrictions of the *Indian Act*.

Testimony was received about the need for appeal procedures for those who had been excluded from membership. Several witnesses spoke about membership codes in which such procedures were spelled out. Among the suggestions were the use of a referendum, appeal to a council of elders, or an Indian membership court. Although the exact nature of the appeal process should be up to each Indian First Nation, the process for recognizing Indian First Nation governments could include verification that an appeal mechanism was in place to protect individual rights.

Several witnesses suggested a two-tier system, which would allow Canada to recognize individuals as Indians even though they might not be recognized by an Indian First Nation as a member. The United Native Nations, for example, spoke about reinstatement of status on a general list, but noted that it would be up to each band to decide whether to admit a person to band membership. (Special 17:21) The Association of Iroquois and Allied Indians set out the following structure:

> The Association recommends a two-tier system of status and membership.
>
> - Federal legislation would recognize all persons constitutionally "Indian" as Indians for the purpose of Indian programs. It is acknowledged that not all programs will necessarily be available to all Indians.
>
> - Indian governments will determine band membership for the purpose of voting, sharing in Indian assets such as reserve lands, capital distributions, etc.
>
> This, in effect gives the Indian government control over who shares in its communal assets. In the corporate model, this is analogous to a closely-held corporation. In terms of the

present *Indian Act*, Indian status would be analogous to registration on the general list, while band membership would be analogous to registration on a band list. (Association of Iroquois and Allied Indians, Special 16A:16-17)

Such an arrangement would involve benefits given by the federal government to individuals; it is not a question involving Indian First Nation governments. The approach has the merit of meeting the concerns of some witnesses without imposing anything on Indian First Nation governments.

10. The Committee recommends that the federal government consider using a general list as a means of providing special status to people who are Indian for purposes of Indian programs, but who are not included in the membership of an Indian First Nation.

Flexible Arrangements

It can be expected that several Indian First Nation governments may wish to combine for various purposes—administrative, economic or cultural. Examples would be education associations, economic development corporations, tribal councils, treaty organizations and assemblies. Legislative authority would, however, be with Indian governments, and the primary relationship of the Indian people involved with the federal government would be through those governments.

It is important that arrangements under which the federal government relates to and recognizes Indian governments allow for change over time. For example, the composition of governments may change. Separate communities with separate governments may want to merge and form a single government. Others may wish to separate and possibly regroup. In the Committee's view it would be desirable to accommodate this kind of change, which is entirely natural. It would, however, be essential that the people of all groups concerned approve.

As Indian people begin to plan their systems of government, it can also be expected that a wide variety of governmental styles will emerge. These styles will reflect historical and traditional values, location, size, culture, economy, and a host of other factors. This diversity is to be respected. It can further be expected that these developments will proceed at different paces, and no time limits or pressures should be imposed. Indian governments will benefit from each other's experience. Needs will also change as conditions evolve and as structures appropriate for one stage cease to be appropriate for another. The federal government should be careful that any system for relating to and recognizing Indian First Nation governments be able to accommodate changes in the structure and composition of those governments.

A special problem faces communities that have maintained close ties and a cultural base but that are not now recognized as bands. They should be free to seek recognition as well as to pursue negotiations to acquire a land base.

> We do not want to prejudge the forms. We do not want to create a static form of government by recognizing only what is there now. In other words, the principle of evolution, evolving forms of government, is very important to us.

. . .Whatever the forms are, existing ones or some modified ones in the future, they have to be made pursuant to Indian initiative and with Indian consent. (Joint Council of Chiefs and the All-Chiefs' Budget Committee of the Assembly of Manitoba Chiefs, Special 3:67)

Constituting Indian First Nation Governments

The people themselves should determine the structure of government they wish to have. They might do this through a process analogous to a constituent assembly. The structures of government elaborated by this process might closely resemble the band council format or they could be something very different. The essential feature is that the form of government would in each case be decided upon by the free choice of the people involved.

11. Eventually, Indian First Nation governments should be recognized and protected through constitutional provisions. Until this can be accomplished, the Committee recommends that the federal government introduce an Indian First Nations Recognition Act, which would confirm the federal government's willingness to recognize the maximum amount of self-government now possible under the Constitution. It would establish criteria to be met by any First Nation government wishing to be recognized as self-governing, such as:

(a) demonstrated support for the new governmental structure by a significant majority of all the people involved in a way that left no doubt as to their desires;

(b) some system of accountability by the government to the people concerned; and

(c) a membership code, and procedures for decision-making and appeals, in accordance with international covenants.

The contents of the proposed Recognition Act should be developed jointly by the federal government and designated representatives of Indian First Nations. It must be the responsibility of First Nations themselves to select a method of designating representatives to negotiate on their behalf. Aside from the development of acceptable and workable legislation, the federal government should refrain from becoming directly involved in community decisions about self-government.

Some communities may be divided on the extent to which they wish to move toward self-government or on the form of government to be established. In such instances the communities themselves should establish what they wish to do and who speaks for them. Only then should the federal government become involved.

It will be important for each Indian First Nation to develop systems of accountability that they might adopt or adapt and entrench in their governmental structures. Specifically these might include provisions relating to:

- financial and other information, annual reports, and audit reports that are readily available and easily understood;
- the reserving of certain rights and areas of interest in which officials would not have authority to act without the people's approval;

- a system through which officials could be removed from office;
- a system through which decisions that are felt to be unjust or improper could be appealed; and
- the protection of individual and collective rights.

The need for accountability systems was widely supported by Indian witnesses. They insisted, however, that each Indian First Nation should develop its own arrangements.

> . . .the Indian nations of the country would want nothing more than accountability under their own terms to their own people. We must have that accountability to them. Right now we do not. We do not have the right to account to our constituents. . . The Minister has all the authority. (Assembly of First Nations, Sub 3:38)

> Each Indian government, through its own internal legislation, administrative and legal processes, will identify its own internal accountability, the means by which its own citizens can exercise their democratic right to know about and control their own resources. (Dakota Nations, Special 12:120)

In summary, an Indian First Nation Recognition Act would demonstrate that the federal government was committed to recognizing the maximum amount of self-government now possible under the Constitution. Specifically, it would:

(a) specify minimum criteria, such as popular support, accountability and a membership code, and establish a process for verifying that Indian bands wishing to be recognized as self-governing had met these criteria; and

(b) elaborate a procedure under which recognition would be accorded.

In subsequent pages, the Committee suggests the establishment of a new ministry of state to manage federal relations with Indian First Nation governments. As well, a panel would be set up to make recommendations to the federal government regarding recognition. Before elaborating these points, the Committee has additional proposals for legislation to put forward.

Additional legislation would be needed authorizing the federal government to enter into agreements with recognized Indian First Nation governments. It could be modelled on the *Agricultural and Rural Development Act* of 1970, which authorizes federal negotiations with the provinces. Through similar legislation, the federal government would be authorized to sign agreements with First Nation governments detailing legislative authority and funding.

Once agreements were concluded, they would be ratified by a process specified in the legislation and would provide the framework in Canadian law for that particular Indian First Nation. In those instances, the *Indian Act* would not be in effect for the Indian First Nation concerned. A section of the recognition statute could state that agreements were to apply "notwithstanding the *Indian Act*". The *Indian Act* would remain in force for those bands that wished to continue under it and would provide a legal structure while agreements were being negotiated.

The particular merit of this approach is that each Indian First Nation government would assume as much jurisdiction as it wished, and the scope of its jurisdiction could be changed over time. The approach has another distinct advantage: the transition to a distinct

order of government in Canada by constitutional change would be easier, because Indian governments would already be functioning. It should even facilitate movement toward constitutional entrenchment by demonstrating the feasibility of self-government and the benefits that would flow from Indian First Nations resuming control of their own affairs.

The third legislative move necessary to facilitate the accommodation of Indian First Nation government would be for the federal government to exercise its jurisdiction with respect to "Indians, and Lands reserved for the Indians" in all fields, particularly where the absence of federal legislation has resulted in the extension of provincial jurisdiction to Indian lands and peoples. Representatives of the Canadian Indian Lawyers' Association pointed to the exclusive jurisdiction of the federal government over Indians and Indian lands, even with respect to matters otherwise falling under provincial jurisdiction:

> Under Section 91(24) of the *Constitution Act, 1867*, [formerly the *B.N.A. Act*], the federal government is given exclusive jurisdiction over Indians and Indian lands. This means that the federal government has the power to pass legislation with respect to Indians and Indian lands without respect to the provinces. This is well illustrated in the *Indian Act*, which deals with areas that are within provincial jurisdiction. Areas such as wills and estates, motor vehicles, marriage, property, creditors' rights, and liquor are all included in the Act. It can therefore be concluded that the federal government has the authority to legislate in all respects of Indians dealing with an area under Section 92 of the *Constitution Act, 1867*. (Sub 13:8)

The Committee's view is that Parliament should move to occupy the field of legislation in relation to "Indians, and Lands reserved for the Indians" and then vacate these areas of jurisdiction to recognized Indian governments. The exact manner of proceeding would require careful consideration and consultation among the federal government, representatives of Indian First Nations and, where applicable, provincial governments. The federal government would proceed to legislate in all areas in which Indian First Nations wished to exercise jurisdiction. Then it would vacate those fields of legislative powers and recognize the duly constituted First Nation government as the appropriate body to exercise them. Indian First Nation governments would then have jurisdiction. They could, if they wished, through negotiation and agreement with the provincial government concerned, continue a provincial program or service for their communities.

12. The Committee recommends three legislative measures:

1. **The enactment of an Indian First Nations Recognition Act committing the federal government to recognize Indian governments accountable to their people.**
2. **Legislation authorizing the federal government to enter into agreements with recognized Indian First Nation governments as to the jurisdiction that each government wishes to occupy.**
3. **Legislation under the authority of Section 91(24) of the *Constitution Act, 1867* designed to occupy all areas of competence necessary to permit Indian First Nations to govern themselves effectively and to ensure that provincial laws would not apply on Indian lands except by agreement of the Indian First Nation government.**

With this legislation in place and supported by appropriate agreements, Indian First Nations could be self-governing in areas in which they wish to legislate.

It is vitally important to ensure that there be no uncertainty as to the legal status of the newly recognized Indian First Nation governments. They would be governments competent to operate within their spheres of jurisdiction, interact with other governments, make contracts, take legal action, and own land. It should be made explicit in the proposed legislation that Indian First Nation governments have these powers.

How does this proposal differ from the DIAND band government proposal to which it may be compared? First of all, the Committee's suggestion is based on a new policy approach, which would set out the goal of a distinct order of government under new constitutional arrangements. The legislative approach recommended by the Committee would open the door to the future rather than facing Indian governments with the barricades of the past. Second, the general structure would be decided upon through a bilateral process such as that described in the Constitutional Accord, not through federally-initiated actions. Arrangements would be based on mutual accommodations, not on acceptance or rejection at the Minister's discretion. Once the procedure was in place, a band's decision to seek recognition of its new structure, and the extent of jurisdiction it wished to exercise, would be based on the band's own assessment, not on the opinion of bureaucrats that the band was sufficiently "advanced".

Although agreements on some subjects can and should be reached and implemented where statutory authorization is already available, in other areas only Parliament could provide the federal government with the authority necessary to act.

13. To ensure prompt action, the Committee recommends that any changes of policy possible under existing laws that would enhance self-government and that are acceptable to designated representatives of Indian First Nations be taken without waiting for the enactment of new legislation.

Ministry of State for Indian First Nations Relations

The past history of the federal-Indian relationship has left a legacy of distrust and suspicion that would seriously impair the capacity of the Department of Indian Affairs and Northern Development to act as the federal instrument for developing a new relationship. The Committee urges the establishment of a small new federal agency to signify the federal government's desire to begin a new stage of co-operative coexistence with the Indian First Nations of Canada. Indian people would welcome such a move:

> The only way to produce legislation acceptable to Indian people is to create an entirely new ministry. The ministry would act as the governmental interface in all matters respecting the development and reconstruction of band government. The working relationship which the ministry would be designed to produce is one of co-operation and support. (Union of British Columbia Indian Chiefs, Special 6:14)

The federal government found it advantageous to create a Federal-Provincial Relations Office in 1975. Designated as a department, its objectives are:

(a) to assist the Prime Minister in his overall responsibilities for federal-provincial relations;

(b) to assist the Minister of State for Federal-Provincial Relations;

(c) to provide Cabinet with greater assistance in examining federal-provincial issues of current and long-term concern; and

(d) to assist in developing federal-provincial consultation on an increasing range of policy fronts.

It undertakes special studies, provides assistance to government departments on provincial matters, and monitors provincial views on federal policies and the evolution of provincial policies as they affect federal policies.

14. The Committee recommends that a Ministry of State for Indian First Nations Relations, linked to the Privy Council Office, be established to manage and co-ordinate the federal government's relations with Indian First Nation governments.

This could include the conduct of negotiations under the bilateral process and responsibility for the fiscal arrangements proposed for funding Indian First Nation government operations, economic development, and the correction of serious infrastructure deficiencies. It should deliver no services, but would co-ordinate its work with the existing Department of Indian Affairs so that the transition to Indian First Nation government would be smooth. Under the *Ministers and Ministers of State Act* of 1970, a Ministry of State for Indian First Nations Relations could be created by order in council.

Recognition

The new Ministry should also be the federal agency responsible for recognizing Indian First Nation governments.

15. Owing to the political sensitivity of the task, the Committee suggests that a small panel be appointed jointly by the Minister of State for Indian First Nations Relations and designated representatives of Indian First Nations to review requests for recognition and consider whether they meet the agreed criteria.

The panel should transmit recommendations for recognition to the governor in council, which in turn would pass an order in council empowering the Governor General to affirm and record federal recognition of that First Nation government. The Committee thought it important that the Governor General formally recognize Indian First Nation governments, because Indian peoples in Canada have traditionally had a special relationship with the Crown. The Governor General's involvement would symbolize the unbroken link with the Crown and confirm that recognition would continue from government to government. The Committee suggests that the Governor General should establish a register of Indian First Nation governments and that a formal ceremony mark the registration of each government.

16. The Committee recommends that the Governor General affirm and record federal recognition of Indian First Nation governments that are accountable to their people and for which significant support has been shown.

To recapitulate, Indian bands would go through the following steps:

1. Decide to govern themselves and set up a process, involving all of the people concerned, to elaborate a form of government.
2. Once a complete structure was worked out, submit it to the people for ratification.

3. Seek recognition of the form of government.

4. Recognition having been acquired, the community would choose or confirm leaders by the process specified under their form of government.

5. Decide, in consultation with the federal government, on the jurisdiction to be exercised.

6. Once agreement was reached, the Indian First Nation government would begin to operate under its powers. Agreements on jurisdiction could be re-negotiated from time to time.

Special Funding

The process the Committee has recommended would involve extra costs for Indian peoples. Materials and programs would have to be developed, meetings organized and advisers retained. Since a fresh start is important, it is desirable that funding not be provided through the usual channels, so as to avoid any risk of charges of interference in the process. It is important that money not be used to further the status quo, but that it be available to all sectors of the community to constitute their governments.

17. The Committee recommends that one-time funding be made available to Indian bands to assist them in developing their governments. The terms of such grants should be worked out by agreement with designated representatives of Indian First Nations.

Facilitating Negotiations

With many negotiations to be undertaken, it can be anticipated that, even under the best of circumstances, problems will arise. Past difficulties experienced by Indian communities in negotiating with the federal government have generated mistrust and suspicion, which could complicate the many rounds of negotiations. In thinking of ways to facilitate these negotiations the Committee looked at two examples.

With the development of extensive negotiations between the federal and provincial governments, the two levels of government decided over a decade ago to set up the Intergovernmental Conference Secretariat to service federal-provincial conferences and meetings. This small and entirely independent body has its own staff. It prepares agendas for federal-provincial meetings and keeps the records of those meetings. Its function is to ensure that meetings run smoothly and that fair records are kept; it is not concerned with the substance of questions. It is jointly funded by the federal and provincial governments to make clear that it serves both levels of government. It is completely separate from the Federal-Provincial Relations Office. The Indian Commission of Ontario operates along similar lines.

18. The Committee recommends that the federal government and designated representatives of Indian First Nations jointly appoint and fund an independent secretariat to provide a neutral forum for conducting negotiations between them.

North of 60°

The social and political situation of Indian First Nations north of 60° is very different from that prevailing in the provinces. Since territorial status is in evolution, Indian peoples,

other aboriginal peoples and non-Indian settlers of the northern territories have a unique opportunity to build the basis for a new relationship more satisfactory than the one that exists in southern Canada. At present, northerners are actively seeking self-government. Both land claims and constitutional discussions are proceeding.

Witnesses at northern hearings described the attempts of First Nations and non-Indian governments to create governmental structures to meet the common needs of all citizens of Canada's North and to respect all cultures. Ongoing negotiations reflect a desire to accommodate the legitimate rights and aspirations of all permanent residents north of 60°. Undoubtedly, any model of self-government that emerges in the North will be adapted to the unique needs of that region.

19. The Committee applauds all initiatives to design innovative government structures for the North embracing all its peoples. The Committee's recommendations focus primarily on the geographically dispersed First Nations of southern Canada, but some of the ideas presented in this report may be helpful to those working toward self-government in the North.

Scope of Powers

Earlier in this report we discussed several jurisdictional areas of particular importance to Indian First Nations—health, education and child welfare. That discussion by no means covered all the powers that Indian First Nation governments might exercise on Indian lands. Self-government would mean that virtually the entire range of law-making, policy, program delivery, law enforcement and adjudication powers would be available to an Indian First Nation government within its territory.

Many witnesses described the traditional jurisdiction of First Nations over their territories and expressed their desire that their right to exercise many of these powers be recognized:

> Traditionally, as aboriginal peoples we had uncontested supreme and absolute power over our territories, our resources, and our lives. We had the right to govern, to make laws and enforce laws, to decide citizenship, to wage war or to make peace, and to manage our lands, our resources, and our institutions. We had our own political, legal, social, and economic systems. We reaffirm our position, as non-treaty aboriginal peoples, that we have never ceded through any agreements or conquest, or surrendered our aboriginal titles and aboriginal rights. The power to govern rests with the people; like our aboriginal rights, it comes from within the people and cannot be taken away.
>
> Our Indian governments are to have exclusive jurisdiction to make laws in relation to matters coming within these classes of subjects—people, resources, and lands—without limiting the scope of the possible subjects to be under the jurisdiction and authority of our peoples. (Cariboo Tribal Council, Special 20:117)

Chief David Ahenakew put the matter very succinctly:

> We expect that First Nations will retain and exercise most rights and jurisdictions which provinces now have within Canada, and some others which are the special rights of the First Nations. First Nations governments will have to develop judicial systems that will establish laws, institutions, and procedures according to the needs and customs of each First Nation. (Assembly of First Nations, Special 9:7)

Even now the range of matters managed by band councils cuts across jurisdictional lines. Some band councils provide services usually handled by municipalities, such as garbage disposal, water, fire protection and recreation. Others also administer programs such as education, health, and child welfare, which are usually provincial responsibilities. Other powers sometimes exercised are within federal jurisdiction—regulating fisheries, for example.

While the Committee believes that the areas of jurisdiction of First Nation governments must be worked out through agreement, Indian First Nation governments would require extensive powers if they were to be self-governing on their own territory and ensure their survival.

20. The Committee agrees that full legislative and policy-making powers on matters affecting Indian people, and full control over the territory and resources within the boundaries of Indian lands, should be among the powers of Indian First Nation governments.

21. The Committee therefore recommends that Indian First Nation governments exercise powers over a wide range of subject matters. The exact scope of jurisdiction should be decided by negotiation with designated representatives of Indian First Nations. A First Nation government should have authority to legislate in such areas as social and cultural development, including education and family relations, land and resource use, revenue-raising, economic and commercial development, and justice and law enforcement, among others. First Nation governments may also wish to make arrangements with the federal and/or provincial governments to continue existing programs or services.

Certain principles behind the recommendation need further explanation. The Committee foresees that for matters coming within exclusive Indian First Nation jurisdiction, the government concerned would have, under its constitution, all necessary powers to make laws and set policy. Although an Indian First Nation government might adopt or adapt the laws of another jurisdiction, the power to decide a course of action and change laws or policies should be vested in the First Nation.

Within its areas of exclusive jurisdiction, an Indian First Nation government would exercise powers over all people inside its territorial limits. Non-members moving onto Indian First Nation land to live, do business or visit would be governed by Indian First Nation laws. Their decisions to do business or live there would be influenced by the fairness of the laws and their application and the availability of an appeal procedure.

Full control over lands and resources within its jurisdiction would mean that an Indian First Nation government would have the right to raise revenues for its own purposes. At present, bands that are declared to have "reached an advanced stage of development" may raise money by property and business taxes (*Indian Act*, s.83). Thus some bands have had experience with the limited exercise of taxing powers. The Committee is proposing a much broader right to tax under which Indian First Nations would be able to raise revenues for their own purposes on the lands under their control and jurisdiction if they wished to do so. Some Indian First Nations might choose to exercise this power as an optional method of supplementing the fiscal arrangements, to encourage and regulate development and to ensure the economic well-being of their communities. The Committee concludes that Indian First Nations should have the right to raise revenues for Indian governmental purposes by taxing individuals, transactions, land and resources within their territorial boundaries.

Accommodating Differences

The concept of full control by a First Nation government opens the possibility of very different standards applying in geographical proximity. The primary method of accommodating all interests would be government-to-government negotiations. Both sides should be aware of the importance of reaching some practical arrangement. In the long term it would be in the interests of Indian First Nation governments and surrounding jurisdictions to endeavour to reach agreement at least in matters of public health and safety.

Governments adjacent to First Nation jurisdictions may be concerned that Indian developments will be incompatible with their own needs, for instance, in regard to zoning. It must be remembered, however, that Indian jurisdictions may have the same concerns about their neighbours. One witness told the Committee that his band had turned down a lucrative deal to lease land for a chemical plant, on the grounds that such a plant would not be in the best interests of all residents of the area. (Musqueam Band, Special 6:61) All such matters should be worked out through negotiation and agreement by the parties concerned.

During the transition from provincial or federal jurisdiction to First Nation jurisdiction, it is important that no vacuums of jurisdiction be allowed to develop. Until a First Nation exercised jurisdiction in a given area, the status quo would prevail.

> Self-government would mean the right to define or redefine our relationship with the rest of Canada, which must be determined at the local level, rather than from the highest level down. It means to expand our government's jurisdiction and evolve traditional forms of government into forms which would be capable of successfully interacting with other levels of Canadian government, while preserving our autonomy, traditional culture, and world view. (Kaska Dena Tribal Council, Special 21:13)

Joint control will be desirable where Indian First Nation and provincial or federal jurisdictions overlap. A good example is resource management on lands to which First Nation rights have been reaffirmed, but that are no longer considered to be lands reserved for Indians (that is, treaty areas or land claim areas). By exercising jurisdiction jointly with other governments, First Nations would be able to protect and have access to traditional resources they consider important. Provincial governments would have different priorities, and accommodations to ensure land use compatible with Indian rights would thus be needed.

> [My] reserve... is four by four square miles, and theoretically there are certain laws which exist within that community. There are treaty rights of hunting, trapping, gathering and fishing, which are protected under that given geographical area of four by four square miles. We are required to hunt and fish and gather wild rice and blueberries within that tract of land.
>
> Then you go outside of that reserve and then the Ontario fish regulations apply. The Boise Cascade Corporation receives a licence and a permit to cut and remove the timbers surrounding our land. In reality, then, when there is no forest and the rivers are polluted and there is no way that one can practise the traditional economy, in that sense the economy has been destroyed, because the forest is cleared away and in the middle you have a four by four square mile tract of land, in which all the treaty guarantees are guaranteed to you but beyond that, outside of that, how many moose, how many deer can travel across that land from which your band members, say 500 people, can exist? It is just not possible. (Rainy Lake Regional Tribal Chiefs, Special 1:30)

It is for reasons such as these that governments must be sensitive to one another's rights and jurisdiction. On their own lands, Indian First Nation governments would have the power to regulate traditional pursuits such as hunting, fishing and trapping without outside interference. On lands covered by treaties or aboriginal claims, such powers would be exercised jointly with other governments.

Acceptance of the laws of Indian First Nations in Canada has been slow, given the restrictive legal regime of the *Indian Act*, the judicial interpretation of the Act, of treaties and of aboriginal rights, and governmental policy in these areas. It is not reasonable to expect that each Indian First Nation government would be prepared to enact immediately a complete set of complex laws covering all areas of jurisdiction. In a transitional phase, as each First Nation's jurisdiction expands and while First Nations develop a body of law, elements of the current non-Indian law will continue to apply in certain ways. During this period co-operative efforts could ensure recognition in Canadian law of Indian values. This is particularly important with respect to religious practices and traditions of family life and child care. Eventually Indian law codes and courts would be put in place, and new accommodations would be required.

Law enforcement has significant effects on Indian First Nations and their citizens. Several witnesses dealt with the need to develop policing arrangements that are sensitive to traditional values and customs. Some suggested Indian officers who would work alongside the RCMP. (Chiniquay Band, Written Submission, Sub 8) The Ontario Indian Police Association stressed the importance of Indian police and made detailed suggestions for establishing such a system.

> The full task of protecting the Indian public should be entrusted to the Indian people. Our heritage has been built on a foundation of moral policy manifested in community laws adapted to our particular needs. We should cultivate an Indian court system that would strengthen these moral foundations by enforcing the Indian and the Canadian law for our people. Proper Indian policing needs full support from such a court. (Special 15A:6)

Others did not see a need for a separate force:

> We would rather see the approach taken whereby we expand on the present force, the RCMP, and just cross-deputize their powers to police under Indian jurisdiction and enforce Indian law when they are on Indian territory. When they are off Indian territory they can continue the practice that they are most familiar with of enforcing provincial-federal law. (Federation of Saskatchewan Indian Nations, Special 16:10)

These suggestions illustrate the need for varied, flexible arrangements across the country and for agreements to ensure a workable sharing of power and responsibility.

> We recognize the potential for conflicts of jurisdiction and the possibility of joint or overlapping jurisdiction in some matters. There is no one answer, no simple answer, to such problems. However, once our jurisdiction is recognized and entrenched, once government-to-government relationships are established, Indian governments can resolve these questions bilaterally with other jurisdictions involved, as is the Canadian tradition. (Dakota Nation, Special 12:119)

Once jurisdictional arrangements are made between a recognized Indian First Nation government and the federal or provincial government (or both), it is essential that the agreement be a binding legal obligation. Even after reaching their landmark agreement with the

federal and Quebec governments, the James Bay Cree were faced with serious problems getting governments to act and to provide funds. Moreover, there was no forum in which they could seek to have the agreement enforced. The Committee urges the parties involved to take steps to ensure that similar problems do not arise in relation to jurisdiction agreements. The terms should be clear and funding secure. Disputes are bound to arise, however, so there must be a workable and expeditious mechanism, acceptable to both sides, to enforce the agreements.

In addition, agreements between Indian First Nations and the federal government would be political settlements, not air-tight legal contracts. Existing courts are not set up to interpret such agreements or to resolve disputes about their interpretation. Adversary procedures might well be considered limiting and inappropriate. Thus, new tribunals would be needed.

Chief David Ahenakew described some of the characteristics a tribunal would need in order to ensure that disputes were resolved fairly:

> . . .Decisions would be considered binding upon both parties. . . It would have available to it other powers, such as mediation, conciliation, and arbitration. It would give equal weight to the First Nations' complaints of violations of rights and to Canadian interpretation of the limits of those rights. It would not leave First Nations totally vulnerable to hidden government opinions of what aboriginal rights are. (Special 9:8-9)

Although mediation or conciliation would be useful in attempting to resolve differences of opinion about interpreting agreements of all descriptions—treaties, jurisdiction agreements, service delivery contracts—there will be occasions where differences are not reconcilable and where an impartial third party must decide. This might be done through arbitration or some other mutually agreed mechanism. The forum must be such that its decisions will be acceptable to all concerned.

22. The Committee recommends the establishment of a specialized tribunal to decide disputes in relation to agreements between Indian First Nations and other governments. Its structures, powers and procedures should be jointly decided by the federal government and designated representatives of Indian First Nations.

Non-Members Living Away from Reserves

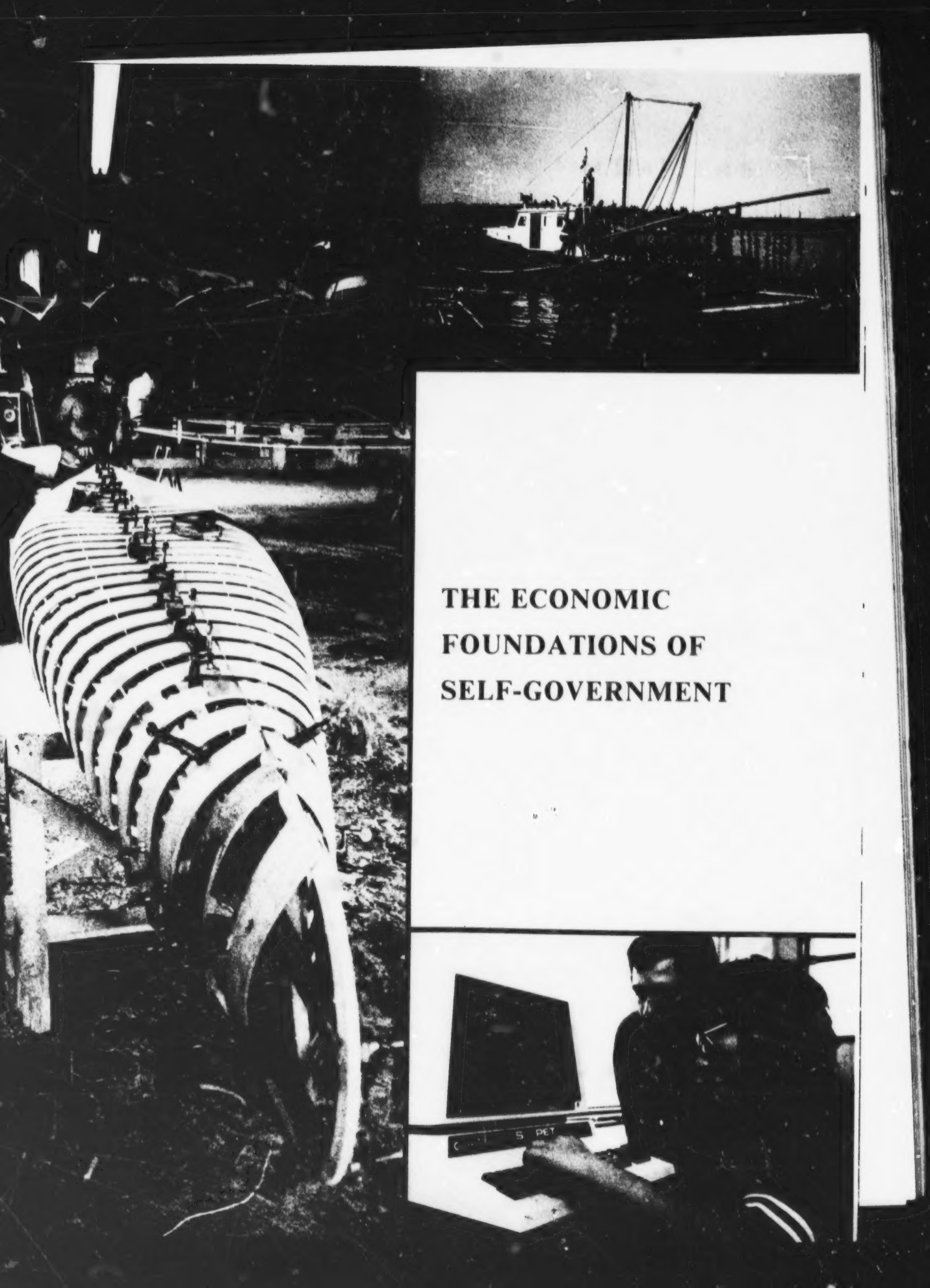
Implementation of the Committee's report would dramatically improve the situation of First Nations residents and their members living off reserves. These proposals for self-government of First Nations do not, however, address the serious problems of Indian people who would not be associated with an Indian First Nation.

Although it is anticipated that First Nations' membership would increase with the removal of *Indian Act* restrictions, not all Indians will become members of Indian First Nations. These non-members are and will remain 'Indians'; they too suffer appalling social conditions and discrimination, whether they live in cities—Regina, Winnipeg, Prince George—or in remote regions of Canada. Their situation cannot be ignored. These people should have rights to special federal programs. By virtue of the *Constitution Act, 1867*, the federal government has jurisdiction for Indians, although federal laws and policies have con-

sistently been designed to deny this constitutional responsibility insofar as Indians living off reserves are concerned.

The Committee has not had the opportunity to study the question in depth, but feels strongly that it cannot be ignored. Indeed, urgent attention is required. It is for this reason that the concept of a general list is important; it would be an acceptance of the fact of this massive social problem and of combined federal and provincial responsibility to seek solutions.

23. The Committee asserts that the continuing responsibilities of the federal government toward Indian people, whether or not they become members of Indian First Nations, must be recognized. The Committee urges federal, provincial and Indian First Nation governments, along with representatives of Indian people who are not members of First Nations, to work toward arrangements that respect the rights and aspirations of all Indian people.



THE ECONOMIC FOUNDATIONS OF SELF-GOVERNMENT

CHAPTER 6

THE ECONOMIC FOUNDATIONS OF SELF-GOVERNMENT

Before the arrival of Europeans in Canada, and for many years after, Indian people were self-sufficient. Indian nations had developed diverse economies based on hunting, trapping, fishing, gathering, farming, crafts and commerce. An extensive trading system for resources and finished goods was established throughout the Americas; it allowed one region to supplement local products with surpluses produced in other regions. Indian nations used treaties of peace and friendship as a principal means of defining economic relations among themselves. The same device was later used to establish relations with colonial governments.

Since the time of contact with Europeans, Indian economies have changed continuously. Concentration on meeting the demand for furs and other goods for European consumption led to dependence on imported goods. Indian economies became more specialized and less diverse. Settlement by Europeans further undermined Indian economies by eroding the land base.

Thus, European settlement gradually disrupted established and complex Indian economies. The policy of the Royal Proclamation of 1763 was to limit further disruption by restricting the activities of settlers. Only the Crown could obtain Indian lands and resources through a treaty-making process. When treaties were negotiated, Indian nations sought to obtain a new economic base in exchange for the land and resources they were relinquishing for settlement. As a result, these treaties contained such economic provisions as the right to pursue traditional activities like hunting, fishing, trapping and gathering on unoccupied traditional lands. In support of these traditional pursuits, twine was provided to make nets and ammunition was supplied for hunting. In addition, livestock and other agricultural items were promised to help Indian people adapt to a farming economy. Educational opportunities—the promise of a teacher and school house in some cases—were intended to contribute to developing human resources.

> The Indian right to economic self-determination was taken for granted by our forefathers when they negotiated the treaties with the Crown. Much of the negotiators' attention was focused on arrangements by which they attempted to secure the economic future of their people.
>
> The spirit and intent of treaties. . .point to financial and technical support for the establishment of a strong, self-sufficient Indian economy. Fully half the negotiations conducted by the Indian leadership dealt with this right. For instance, our treaties expressed the promise of equipment, expertise, and assistance required to maintain the traditional economy, including hunting, fishing, and trapping activities; and of course to develop new economic areas, such as agriculture, business resource development, and financial institutions. (Federation of Saskatchewan Indian Nations, Special 12:61)

The spirit and intent of treaty economic provisions have been forgotten over the years. Indian witnesses suggested that the treaties should be revitalized by interpreting them broadly to mean economic support in a contemporary context. This approach was reinforced by a research study commissioned by the Committee, "The Economic Foundations of Indian Self-Government" (see Appendix F). It called for flexibility and a spirit of generosity in the fulfilment of treaty obligations.

> The treaties were, after all, fundamental political, social and economic documents whose provisions would have to fit unforeseen future circumstances. Their texts were never intended to be strictly observed to the detriment of Indian nations and their economies. They were to be living, humane documents—and the principle of generosity made them humane and gave them life. (Economic Foundations Study, p. 33)

One source of economic support that Indian First Nations could turn to was the sale of portions of the lands that had been set aside for their use. When parts of these lands, or the resources from them, were sold, the proceeds were to be placed in government-administered capital trust accounts. The interest from these accounts (and in some cases the capital itself) was used to establish farms, for example, or to provide needed services. Until Confederation, public funds were not required for Indians because they supported themselves. In fact, some Indian nations remained self-supporting until the 1950s.

Over the years, however, the resources of Indian peoples have been dwindling. The real value of the capital accounts has fallen as a result of government mismanagement, carelessness and, in some instances, corrupt actions.* Inflation has further diminished the value of what moneys remained. At the same time, the needs and expectations of Indian people, along with those of all Canadians, have been growing.

As a result of these developments, providing funds for Indian programs has gradually become a permanent feature of the federal government's expenditures. A pattern of economic and political dependency has been created that requires greater expenditures each year.

* Trust Study, p. 15. (See Chapter 9 and Appendix F.)

Obstacles to Development

The correction of these economic problems has been hindered by institutionalized obstacles. For example, the aboriginal rights to hunt, fish, trap and gather were confirmed by the Royal Proclamation and guaranteed by the treaties, but these rights have subsequently been restricted by laws such as the *Migratory Birds Act* and the Natural Resources Transfer Agreements between the federal government and the provinces.

The *Indian Act* is another obstacle to economic development because, among its other deficiencies, bands have no powers to control development. Moreover, bands or Indian-controlled enterprises that incorporate are subject to tax because such entities are not considered to be "Indians" within the definition in the Act.

> Sections 87 and 90 of the *Indian Act* exempt Indians from certain federal and provincial taxes. Two problems arise in relation to these provisions. First, if an Indian business operating on a reserve incorporates, it acquires a new, non-Indian, legal personality and thereby becomes subject to federal and provincial taxation. Indian tax exemption for on-reserve profits and income provides a valuable incentive for on-reserve economic development but, as it stands now, incorporation would completly negate this asset. The DIA promotes incorporation as a preferred vehicle for business operations. (Economic Foundations Study, pp. 39-40)

Provincial laws may also apply to these corporations. Furthermore, Indian businesses have difficulty raising funds because they cannot use Indian lands as security.

Witnesses asserted that government programs also hinder economic development:

> One [obstacle] is the hesitancy of government personnel in all stages of a project, from feasibility to implementation. They are hesitant for three reasons. First, they worry about government funds. It could be a real fear that one day they would be dragged before some of your committee members to be called to account for their actions. It is a real hesitancy that leads to under-capitalization of projects and an inability to provide assistance in the timely ways that business requires.
>
> The second reason they hesitate is that they themselves lack the personal and business expertise necessary. It would be unreasonable to expect that a few people in the London district [of DIAND] would have the expert knowledge necessary for projects ranging from marinas and trailer parks to automobile factories.
>
> The third reason is a lack of confidence in the capability of Indians. This is the more irrational of their concerns. We have the ability. We have worked hard to develop institutions such as the ARISE corporation in southwestern Ontario.. Our record speaks for itself. (Union of Ontario Indians, Special 15:85)

These witnesses also remarked that the multi-agency approach has not helped; each agency imposes its own monitoring and accountability processes, leading to confusion and delays. The Union of Nova Scotia Indians asserted that the DIAND economic development fund "has become a lender of last resort, with higher interest rates than normal", rather than providing low rates to give Indian ventures a much-needed boost. (Special 25:18)

Moreover, DIAND funds budgeted for economic development are often diverted to other purposes. The Coopers & Lybrand study (see Chapter 7) confirmed that when departmental funds fall short in other areas, economic development funds are among the first to be reallocated. The findings of the economic foundations study were similar.

Witnesses were especially critical of the sizable sums spent on welfare, money they felt could be better used to create employment:

> In economic development we would like to see funding to the individual Indian nations at the same level or more than we have been receiving in welfare. We receive $160,000 for economic development for 15 bands in our district and we receive in welfare $4.2 million, which is an increase [over] last year of about $1.2 million. (Cariboo Tribal Council, Special 20:119-120)

Witnesses also pointed out that the serious infrastructure deficiencies that now predominate in most Indian communities severely inhibit economic development. As documented in Chapter 2, a high proportion of Indian communities do not have adequate water supplies, sewage systems, roads or housing. People cannot be expected to give priority to spending for economic development ventures when their own living circumstances are totally inadequate. Deficiencies in infrastructure also hinder development by discouraging investment.

Case Studies

The Committee's research study on the economic foundations for self-government guided the Committee in making recommendations aimed at eliminating these obstacles and promoting the economic development of First Nations.

The study identified six areas that must be controlled by Indian governments: land and resources, capital, labour, organization, planning and technology. This conclusion was based on the researchers' analysis of the experiences of seven Indian governments engaged in economic initiatives.* All participants in these cases studies saw expansion of their land and resource base as fundamental to future economic development and self-reliance. The settlement of claims and the fulfilment of treaties must go hand in hand with control over other factors such as capital, labour, organization and technology. Access to adequate and secure funding is essential so that economic ventures are able to plan, expand and diversify.

The case studies further revealed that job creation, on and off reserves, and the enhancement of skills are priorities. Because of high rates of unemployment, Indian communities attach more importance to job creation than to profit-making. Developing employment opportunities in their communities could enhance the survival of Indian First Nations as distinct cultures by enabling more people to live and work in their communities and thus participate more fully in all aspects of community life. In the past, migration from reserves because of the absence of economic opportunities has contributed to a weakening of cultural ties.

Those interviewed also felt that planning for economic development must be comprehensive, long-range and controlled by those whom it most affects. There was no consensus about the best form of economic organization for Indian economic development. A mix of band-controlled ventures, with opportunities for individual spin-off enterprises, seemed preferable.

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* The subjects of the case studies were as follows: 1. Roseau River Indian Band and Long Plain Indian Band, Dakota Ojibway Development Group Inc., Winnipeg, Manitoba; 2. SINCO Developments Ltd., Saskatoon, Saskatchewan; 3. Sheshaht Indian Band, Nuu-Cha-Nulth Tribal Council, Port Alberni, B.C.; 4. Chippewas of Sarnia, Sarnia, Ontario; 5. Mattagami Indian Band, Gogama, Ontario, Grand Council Treaty 9, Timmins, Ontario; 6. Nuhalk Nation, Bella Coola, B.C.; and 7. Seton Lake Indian Band, Seton Lake, B.C.

Currently, as in other program areas, real control rests with the Department of Indian Affairs and Northern Development rather than with the communities involved:

> Ultimate control over economic development programs and funding remains with the Department. Community control, as used by the Department, means administration of DIA economic programs at the local level. Control of the development process by Indian governments is excluded from the DIA strategy. (Economic Foundations Study, p. 53)

The analysis of the seven case studies concluded that economic development succeeds best when carried out at the community level. An examination of these economic development ventures revealed the need for flexibility and diversity in the planning of structures.

> Indian governments must be free to choose the types of organizational structures that best serve their developmental needs. Some communities and their governments may decide that community development corporations best serve their interests; others may opt for a combination of band-owned and individually-owned enterprises. Still other communities may find that none of these options is particularly appropriate for their needs. There will be room for a great deal of innovative thinking on economic organization once major institutional obstacles are removed. (Economic Foundations Study, p. 125)

Indian First Nations must have control of resources as well as programs. Particularly important are those resources needed for traditional economic pursuits:

> What is at stake is control over and access to resources which are essential to Indians' economic, cultural and political development. In rural and remote regions especially, hunting, fishing and trapping for subsistence and commercial purposes have been a traditional foundation of Indian economies. . . .
>
> The economic foundation of Indian self-government requires recognition of Indian hunting, fishing and trapping rights. This recognition is a prerequisite for Indian governments to exercise effective control of this vital traditional resource. (Economic Foundations Study, p. 45)

New Arrangements

Indian First Nations must have the power to plan and implement economic ventures at the community level. Such initiatives may take many forms. Indian First Nations should be free to set up economic development boards, corporations or agencies to use the funds received to promote economic development. Some Indian bands and tribal councils have already established development institutions. The Dakota Ojibway Development Group Inc., the economic arm of the Dakota Ojibway Tribal Council, began formal operations in February 1982.

> In less than a year the DODG has undertaken feasibility studies and market analyses, examining costs, competition and viability, and has presented its findings to the communities for further discussion. It has started or sustained 17 successful businesses ranging from a cow-calf operation to a labour-intensive tackle manufacturing industry. It involves a total investment of $1.32 million on DOTC reserves and has created 29 new jobs while maintaining 22 existing ones. In 1983 another 11 planned projects will help to create 63 full-time jobs with a total funding of $3.637 million. The funding is secured from private sector sources, as well as other established government programs. (Dakota Ojibway Tribal Council, Special 2:19-20)

The economic ventures undertaken by some of the member bands of the Dakota Ojibway Tribal Council range from the manufacture of compound bows to the production of computer chips. (Special 2:46)

The economic foundations study described several principles that should guide the establishment of new arrangements:

> From a development perspective, the exercise of effective control by Indian nations, peoples or communities over the resources and institutions that directly affect their lives means control over a resource base sufficient to meet material needs and political control over the development process itself at the local level. In short, the economic foundation for Indian self-government is a viable economic base, the resources of which are developed under Indian control at the community level. (Economic Foundations Study, p. 117)

24. A new relationship between Indian First Nations and the federal government should ultimately result in the provision of an adequate land and resource base and the settlement of claims. Prospects for economic development would improve if the land base were expanded, claims were settled, and the control of resources on Indian lands were transferred to Indian First Nations. These actions would help to build the foundations for economic development, but they will take considerable time to accomplish.

25. It is essential that Indian First Nations be able to get on with the task of economic development without delay.

26. The Committee considers control of a strong economic base to be essential for the effective exercise of Indian self-government. In planning for development of the economic base, the people of an Indian First Nation should be able to set goals, define strategies and then act to realize their potential. To do this they will require substantial funding.

27. The Committee recommends that, in determining the fiscal arrangements with Indian First Nations (discussed in Chapter 7), sufficient funds be included to enable Indian First Nations to correct any serious deficiencies in community infrastructure and to begin economic development.

A Special Development Bank

It is necessary to develop innovative financing methods that would protect the Indian First Nations' land base and at the same time permit their businesses to raise capital. It is important that all available federal resources be used to further these objectives.

At present, the most significant block of funding that could be brought to bear on improving the economic situation of Indian First Nations is the $345 million Native Economic Development Fund. The Committee realizes that the Fund is intended for Métis, Inuit and non-status Indians, as well as for Indian First Nations. Since it is still in the formative stage, it would be possible for the federal government to commit the Fund to economic development efforts that would foster Indian self-government as well as the economic goals of other native peoples. Indeed, failure to do so could mean that the Fund would operate at cross-purposes with Indian governments. For instance, off-reserve economic initiatives could worsen the gap between reserve and off-reserve economies and weaken Indian communities. As well, a large development established for profit might overshadow programs initiated by a small Indian government.

The Committee proposes that the most prudent use of the $345 million Fund would be to capitalize a bank—under Schedule B of the *Bank Act*—with restricted share ownership and banking functions. Representatives of Indian First Nation governments could meet with Métis, Inuit and non-status leadership to reach a mutually satisfactory accommodation upon which such a bank could be founded. They might, for example, agree on a *pro rata* quota for loans, which would protect the interests of each founding group. They might even agree upon separate branches to deal with clientele from each group. While the federal government, as well as other interests, could be represented on the board of such a bank, the native peoples' groups involved would control the venture.

28. If representatives of the national aboriginal organizations agree to use the $345 million Native Economic Development Fund to found a special development bank, the Committee recommends that the federal government commit the Fund as the bank's initial capitalization.

Given the amount of economic development necessary to assist Indian First Nations to reach a satisfactory standard of development, additional capitalization should be sought from all sources, including Indian and non-Indian investors, unions, churches and private investors. The federal government should provide incentives to investment by granting special tax treatment to bonds issued by the bank. Its loans should also be backed by federal guarantees.

The Committee also emphasizes that capitalization of this bank must not be the federal government's sole contribution to the economic development of Indian First Nations. The bank would not be in a position to make forgiveable or interest-free loans or to provide economic development grants that would not be repayable. The Committee expects that funds for this type of economic development assistance would be available to Indian First Nations through the fiscal arrangements recommended in Chapter 7.

Special economic incentives could also be provided to Indian First Nations. Witnesses suggested that these could include tax incentives for investors, special bonds or tax-free zones.

> We would strongly recommend that reserves like Cole Harbour be given priority in the establishment of free trade zones. . . .It is our right to obtain things tax-free and at the same time barter for them or sell them at a cost advantage within our country. (Millbrook Band, Special 24:36, 43)

The Jay Treaty also has economic implications. This treaty between Great Britain and the United States confirms the right of North American Indians to cross the border with normal goods and "freely carry on trade and commerce with each other". Canada has never passed legislation to make these provisions of the treaty part of Canadian law. In addition to the economic benefits of the Jay Treaty, the right to free passage is important for cultural reasons.

Failure to recognize the Jay Treaty has interfered with Indian people crossing the border with items for ceremonial or religious purposes. On the West Coast, for example, where members of an Indian First Nation may live on both sides of the international border, witnesses described how they were stopped from bringing goods across the border for Potlatch ceremonies. An elder, Bobby Woods, wrote to the Committee about the right to cross borders feely for religious purposes:

Many tribes bordering Canada and Mexico from the United States have been split by international boundaries, and historically been involved in border disputes with the Immigration and Customs departments. Natives cross to attend ceremonies and visit ancient Tribal sites. Medicine bundles and other religious materials prepared and sealed by Medicine men and worn for health, protection and purity reasons have sometimes been searched and even confiscated by customs officials. Both actions render religious materials unclean and useless to their owners according to their religious beliefs. (Written Submission, Special 12A:2)

29. The Committee recommends that the federal government introduce legislation to implement the Jay Treaty.

FISCAL ARRANGEMENTS

CHAPTER 7

FISCAL ARRANGEMENTS

If Indian First Nations are to govern their own affairs, a financial underpinning that is in harmony with and reinforces this objective must exist. Present funding arrangements effectively deny Indian band councils and tribal councils control of the programs they administer; they exclude Indian people from policy-making; they place impossible accountability burdens on band councils that have assumed responsibility for administering programs; and they generate an excessive federal administrative and monitoring superstructure. In short, they inhibit the development of Indian self-government. The Committee is convinced that the federal government, in establishing a new relationship with Indian governments, must take a radically different approach to its fiscal arrangements with them.

In view of the obviously central importance of federal fiscal arrangements to Indian self-government, the Committee commissioned a study, "Federal Expenditures and Mechanisms for their Transfer to Indians", by the national accounting firm, Coopers & Lybrand (see Appendix F).

Evolution of the Present System

Indian First Nations used to be self-sufficient, but European settlement destroyed the economies they had developed. Increased federal spending has been required as Indian people became increasingly dependent on government money for their basic needs. An additional factor has been the major growth in the social service role of government in Canada. Initially, the Department of Indian Affairs and Northern Development delivered these services. Later, as part of a policy to integrate Indian people, administrative responsibility for some services was shifted to provincial governments, which were usually reimbursed for the costs involved. In a further move, the federal government decided in 1968 to encourage the transfer of the administration of certain services and programs to band councils. This was

followed in 1974 by the provision of core funding to band councils to cover management and administration. In the process, the Department of Indian Affairs and Northern Development shifted its focus from delivering services to advising and monitoring the performance of band councils and their staffs.

Federal expenditures in general have increased enormously since governments assumed extensive responsibility for providing social services to all citizens. To control this situation, the federal government has developed extremely complex planning, budgeting, reporting and financial control systems. As some Indian bands are now part of the delivery process (for example, approximately half the social services available on Indian reserves are administered by band councils), and are financed for this purpose by DIAND, comprehensive accountability is required of them—requirements not needed for their own local governmental purposes. These onerous accountability obligations are rationalized by a conviction that Indian people lack the capacity to administer their own affairs and are the natural response of a bureaucracy anxious to retain control of its programs. They are also rationalized on the basis of criticisms from the Auditor General about the inadequacies of financial controls.

Under the complex management and accountability regime imposed by DIAND, band councils are expected to provide the Department with a detailed accounting of all the activities they administer. This situation led Coopers & Lybrand to comment:

> Just as control of the purse was fundamental to the evolution of our own parliamentary system of government, it is also fundamental to the survival and growth of government bureaucracies. Thus, Indian self-government comes into conflict with bureaucratic processes, and it is not surprising that real decision-making power, which depends on having unrestricted funding, has not been transferred to Indian bands and councils. (Summary Report, p. 18)

Deficiencies of Present Arrangements

Indian witnesses provided eloquent testimony regarding the deficiencies of the present funding arrangements. Devolving responsibility to Indian bands to administer services has generated extensive negotiations each year:

> In effect, we are caught up in a process which requires us to negotiate annually, on a line-by-line basis every significant individual item in our operating budget. This is a protracted and frustrating activity which absorbs great chunks of staff time and energy. (Blackfoot Band, Sub 8:90)

The effort involved causes resentment because Indian people have found no evidence that the policy of devolution has had any long-term purpose benefiting Indians. In fact, negotiations often end by the Department of Indian Affairs and Northern Development making unilateral decisions.

> A long-range plan for the orderly and co-ordinated transfer of programs in terms of the Department to the bands was not in place. The Department of Indian Affairs did not make estimates of the cost to implement their policy, a policy that was publicly announced many times for several years. There were no criteria to carry out the policy. Can this be indicative of the Department of Indian Affairs sincerely regarding the implementation of its policy of devolution? (Association of Tribal Councils of Manitoba, Special 2:83-84)

Although in theory a policy of transferring responsibility for administering programs might be expected to improve the delivery of services, the funding arrangements have often had the opposite effect. Even though the process of forecasting budgets begins three years in advance within the Department of Indian Affairs and Northern Development, bands noted that they often did not know how much money they would receive until months after the beginning of the fiscal year. One group told how its funds were held up in Ottawa from April 1 until November 5, 1982:

> I want to emphasize that the delay was not the result of any disagreement over our requests. It was merely a processing delay. This standard approval took over eight months to obtain. For such delays to be allowed to happen is scandalous. (Blackfoot Band, Sub 8:89)

This kind of situation forces bands to borrow to cover operating expenses; in the process they incur heavy and unnecessary interest charges for which they are not reimbursed:

> It has been estimated in our area that the bank interest charges incurred by this cumbersome reimbursement exceed $80,000 a year. (Carrier-Sekani Tribal Council, Special 20:29)

Equally frustrating is the fact that attempts at forward planning often lead nowhere:

> We spend hours in meeting after meeting planning the [DIAND] five-year plan. After a year or two, DIA comes back to us and tells us that the five-year plan is out, they have no dollars for it. It is the frustration and the instability of DIA planning that we suffer through. (Kitamaat Village Council, Special 7:82)

A matter of particular concern to witnesses was the cost of the administrative structure, in terms of the bureaucracy in the Department of Indian Affairs and Northern Development as well as at the individual band level. In their view, these represented excessive unproductive expenditures:

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A matter of particular concern to witnesses was the cost of the administrative structure, in terms of the bureaucracy in the Department of Indian Affairs and Northern Development as well as at the individual band level. In their view, these represented excessive unproductive expenditures:

> But I also carry a concern about those dollars that Indians never see; those dollars that go to support a bureaucracy that does not seem to be achieving success; a bureaucracy that gobbles up in excess of 30 per cent of dollars allocated to Indians across Canada. (Christian Island Reserve, Special 15:69)

Another witness focused on the burden placed on bands by the new system:

> . . .the problem we have now is that the way the system is set up, we have to report to many different levels of government. A lot of paperwork is involved, and we do not think that is necessary at all. (North Coast Tribal Council, Special 7:17)

Still another witness objected to the fact that Indian bands were expected to provide services similar to those the Department provided, but with smaller staffs and no administrative funding. Witnesses also noted that although the departmental budget might increase by a certain percentage, the budget of bands did not increase at the same rate. Moreover, band councils were not in a financial position to match the salaries and benefits paid to departmental employees, making it difficult for them to recruit and retain competent staff.

> They [the Nuu-chah-nulth Tribal Council] found out the number of man-years the Department had been exercising, previous to their takeover, was a considerably larger number than what they actually were given; and it was almost two to one. In fact, when they took over, they found they were operating at a budget of something like 43 per cent of what the Department of Indian Affairs was operating at, previously, to provide the same services. (Native Council of Canada, Sub 7:10)

Apart from the cost, witnesses were critical of the stultifying effect on band morale.

> DIA has developed a network of paper-shuffling and checkpoints within its bureaucracy that is so painstaking and complicated that it undermines all band initiative and enthusiasm. (Chiniquay Band, Written Submission)

Moreover, strong feelings were expressed that the controls were more onerous than government financial regulations required.

> Much of the tightening-up by the Department is pure window-dressing, as the flood of paper dealing with annual and five-year plans contains no meaningful controls over, for instance, the productivity and work performances of departmental bureaucrats. But at the reserve and tribal council levels, the increase in controls is real. The Department has unilaterally built into its contribution agreements, for instance, a degree of control that exceeds by far that required by Treasury Board. (Joint Council of Chiefs and the All Chiefs' Budget Committee of the Assembly of Manitoba Chiefs, Special 3:51)

A witness suggested that "in order to satisfy their own uneasiness about their own constituencies, they infict upon us reporting requirements far greater than they would wish for themselves." (Blackfoot Band, Sub 8:81)

Funds are now provided through complex 'contribution agreements', which impose extensive conditions. Several witnesses took the strongest exception to such agreements as a form of funding:

> Contribution agreements are not agreements as such but are unilaterally imposed under the threat of withdrawal of funds. They call for repayment of surplus funds and deficits. They are entirely conditional, carrying with them no obligation on the part of the government to provide adequate and efficient services. They are also arbitrary in that their terms and conditions vary from band to band and tribal council to tribal council in a highly discriminatory manner. As the principal instrument in the Department's devolution policy, their terms are a matter of grave concern to us. (Joint Council of Chiefs and All Chiefs' Budget Committee of the Assembly of Manitoba Chiefs, Special 3:52)

A specific complaint was a provision making it impossible to carry over a surplus into a subsequent year.

> . . .If a band were to practise a very conservative program for the year and create a surplus, the Department would merely move that resource to the following year, keeping that particular program static, thus eliminating incentive for the band to save money for other programs. (Christian Island Reserve, Special 15:65)

This practice is the more objectionable, it was asserted, because deficits are carried forward and must be repaid.

Another concern was that excessive emphasis had been placed on welfare services rather than on development.

> Existing arrangements lock our people into a permanent welfare system which cannot produce any positive solutions. Controversies will continue endlessly unless basic changes are made in the financial arrangements which directly affect our communities. (Bella Coola District Council, Special 6:83)

Witnesses argued strongly for a more flexible arrangement that would free them to focus on economic development:

> The social development programs. . . in fact are anti-social development, in our estimation. It is the only budget we have that is open-ended. . . Our desire is to take these kinds of programs and use them to develop housing programs and for overall development, to be relieved of the restrictions after the broad objectives have been stated. (Kitamaat Village Council, Special 7:69)

Similar objections were raised to the fact that in times of budget restraint DIAND tended to make cuts in funds for economic development and for band government, while not reducing its own administrative budget. One witness commented:

> Funding in the past has been inadequate. But the problem has only been worsening. Funding for management support services for tribal councils is listed under "all other services" and is severely reduced—sometimes by 50 per cent every year. The conversion of capital funds is not an acceptable alternative... (Southeast Resource Development Council, Special 2:11)

More generally, the Committee was told:

> ...that non-discretionary—protected—funds suddenly become discretionary—unprotected—when an Indian Band is allowed to take over a program. Indian Bands are not given the same assurances that funds will continue to exist as opposed to the protective category that certain funds have while the Department of Indian Affairs is in control of those funds. (Peguis Indian Band, Special 3:117)

A strongly held suspicion that the Department uses its control of funding to promote hidden objectives surfaced more than once:

> It has long been my contention that the Department of Indian Affairs uses two standards for funding bands in order to promote their political objectives and philosophies at the reserve level. (Union of British Columbia Indian Chiefs, Special 6:10)

Another witness put his concerns more bluntly:

> Under the present system now, political blackmail can be practised... the Department of Indian Affairs, since it controls the funding, can also control the elections of the band... So if [someone] is strongly opposed to the implementation of user fees or the J circulars, [the Department], by withholding funds to the band, would see that [he] would not be around after the next election because the band membership would say, well, we do not have any capital housing this year under your administration. (Chippewas of the Thames, Special 15:83-84)

In more general terms, the Department's control of funding was seen as having a damaging effect on relations between Indian peoples and the Canadian government.

> There now exists a large, costly, inefficient bureaucracy that delivers Indian services and programs. The Indian Affairs Department competes with our governments for authority, and inevitably maintains the colonial character of our relationship with the Canadian government. (Bella Coola District Council, Special 6:83)

Devolving responsibility to Indian bands for the delivery of services, while retaining departmental control of policy through control of funding, has frustrated the declared purpose of devolution—namely, strengthening the capacity of Indian peoples to run their own affairs. One witness complained that "band councils are just fancy cheque-writers for the federal government". (Rainy Lake Regional Tribal Chiefs, Special 1:37) Another commented more generally:

> ...easily 75 per cent of the time and energy of our band government is spent satisfying the record-keeping, data analysis, reporting, forecasting and evaluation requirements established by the many agencies of government which regulate our lives. Indeed, the very structure of our government is determined by the need to comply with these tasks. And because of the increasing emphasis of the past 2 to 3 years, on accountability to central

> agencies, the proportion of our energies going to satisfy bureaucratic processes has grown dramatically. This at a time when DIAND talks of "devolution". Indeed, along with most other governments in this country, we are more truly a branch office of the Indian Affairs department than we are a tribal government. . . . (Blackfoot Band, Sub 8:80)

The conclusion expressed by a third witness was particularly frank and disturbing:

> It should appear self-evident that without Indian people having ultimate control over finances, the exercise of self-government is impossible. Economic development becomes irrelevant, if not impossible. [The current system] is demeaning, irrelevant, and counter-productive in terms of nurturing mutual respect. (Grand Council of Treaty No. 3, Special 1:95)

The result of this situation is unfortunate. Indian leadership feel they have taken over a lot of administrative work and problems formerly borne by the Department without being properly compensated, without being given any discretion or control, and without resultant savings in departmental administrative costs.

Departmental personnel, on the other hand, feel that program devolution requires the Department to take on even more staff and put in place systems to cope with what they view as Indian administrative inadequacies. A briefing book on band government prepared by the Department claimed that "costs of the programs themselves were found to increase from 20 per cent to 30 per cent when programs were transferred to Indian management". It went onto claim that "many bands have not developed the management capacity required to participate in the devolution process". (p. 23)

Conclusions of the Research Report

Because of this disturbing testimony, Coopers & Lybrand were directed to look at how the current service delivery systems operate and are funded, to assess what proportion of funds spent are absorbed in administration and what proportion directly benefit Indian people, to examine the accountability requirements and consider their effects, and to make proposals regarding alternative funding arrangements. They were asked not only to look at the Department of Indian Affairs and Northern Development, but also to use two tribal councils as case studies.

The study, running to seve. ıl hundred pages, documents and substantiates most of the criticisms expressed by witnesses. As the Coopers & Lybrands conclusions are so cogent, and reflect so closely the Committee's own assessment, the Committee decided to reproduce them here *in extenso*.

Transfer of Administrative Responsibility

The chapter of the Coopers & Lybrand report dealing with the transfer of administrative responsibility describes current administrative processes in some detail and reviews information collected from the Central Interior Tribal Councils (CITC) of British Columbia and the United Chiefs and Councils of Manitoulin (UCCM). CITC was selected as a case study of tribal councils that have been given responsibility for delivering a number of services previously administered by the Department. UCCM provided an example of a tribal council that delivers fewer services. The conclusions of this chapter read as follows:

The description of administrative processes clearly shows a duplication of administrative structures within DIAND and between DIAND and Indian bands and councils. The case studies show how person-years and dollars have been absorbed in monitoring and administrative processes and in other purposes. These case studies and the Department's own assessments show that Indian bands incur equal, if not greater costs, when they take over administrative duties from the Department, while at the same time the Department has added to its costs by taking on advisory and monitoring roles. The band administrative structures may cost more, but Indian involvement in the processes seems to increase their effectiveness according to almost everyone that we interviewed. In addition, the contribution made by providing effective and satisfying employment to Indians with advanced education should not be overlooked.

Based on our examination of the roles and responsibilities of each of the levels within DIAND and of the bands administering programs in the British Columbia and Ontario regions, a number of conclusions can be reached with respect to the effects of the transfer process on both Indian self-government and the costs of administration. These are:

Underlying objectives of transfer process:

- DIAND staff do not believe that they have an adequate plan to complete the transfer process...
- The process of transfer to date has been essentially a delegation of DIAND administrative responsibilities to bands and tribal councils. There has been no real shift in decision-making responsibilities... and almost complete control still lies with the Department.

Changes in administrative costs:

- Staff reductions at the regional level have been inhibited by the additional burdens, program enrichment, and new thrusts imposed on them from headquarters and central agencies...
- ...significant duplication takes place within DIAND and between DIAND and the bands.
- Limitations on signing authorities cause excessive case load back up through the system...
- The costs of responding to central agency criticisms of the lack of an adequate accountability framework have created an internal shift of resources away from programs and into financial control and management improvement projects, as well as increasing the administrative burden on program staff.

DIAND'S difficulties in coping with change:

- The process of transfer has created a role change for DIAND personnel from service delivery to advising and monitoring...
- Combining monitoring and advising roles in the same field staff is not working well because the two roles are basically in conflict with each other. Staff cannot be expected to inspire trust and confidence as advisers to bands when they also are monitoring band performance....

Indian band administrative capabilities:

- Bands that are now successfully administering their programs have gone through rough times but have succeeded more often because of their own leadership and staffing than because of the training, advice and monitoring of the Department.

- Many bands have had problems in assuming programming and administrative responsibilities. . . but present practices of having the same people who were supposed to train, advise and monitor them take over in these situations is unacceptable to the bands and likely also to be ineffective given that they did not succeed in preventing the problem occurring and may actually have contributed to it.

- DIAND is an adminstrative machine, not a people-development mechanism.

- Many of the services being delivered could be provided and are being better provided by a band's own advisers than by DIAND staff. (Section 3 & 4, pp. 78-81)

Coopers & Lybrand also cited a study by the British Columbia region of DIAND surveying Indian perspectives on current problems. The survey found that:

- administrative processes and how they are conducted cause most of the problems between DIAND and the Indian bands;

- DIAND is not keeping up with the administrative progress of many bands; and

- DIAND underestimates and under-utilizes the emerging cadre of Indian managers.

The Coopers & Lybrand study drew the following conclusion:

> In summary, the present relationship between DIAND and Indian governments is not satisfactory. If Indian governments are to be allowed to govern the affairs of their people, then administrative and funding relationships with the federal government must recognize this in the same way that it is recognized with provinces. Indian people should be allowed to help define the roles to be played by the federal government in fostering the development of Indian self-government. (Section 3 & 4, p. 82)

Administrative Costs

Coopers & Lybrand were asked to calculate the proportion of funds that were expended on departmental administration and that did not therefore reach Indian people. They concentrated on the Indian and Inuit Affairs Program, which accounts for most of the Department's expenditures. They concluded that one-quarter of the funds expended in 1981-82 on this program, or about $250,000,000, went to administer it. A further $39,102,000 was spent on general departmental administration. In their opinion, administrative costs accordingly amounted to more than 25 per cent of total expenditures. The actual percentage would be even higher if the heavy costs incurred directly by bands to meet the Department's administrative demands were included. Coopers & Lybrand commented that the administrative costs of Indian bands need not exceed those of other small organizations or businesses. At present the requirements imposed on Indian bands result in far greater costs.

Size of Departmental Staff

Of special interest to the Committee was the effect on the size of the Department of the transfer of administrative responsibility to bands. A study commissioned by the Department showed that such transfers increase the cost of providing goods and services to Indian people by between 20 and 30 per cent. Two-thirds of this cost increase was caused by increased administrative costs, mainly due to the Department's expanded advisory and monitoring

functions. One-third of the increase in costs resulted from demands for better facilities, program enrichment and lost economies of scale. For example, Indian-controlled education has encouraged Indian children to remain longer in school, resulting in higher costs.

Government officials told the Committee that these increased costs were the unavoidable consequence of a policy of devolution. The implication of this approach is that as more service delivery is transferred to bands, administrative costs will increase, thereby reducing the funds available for the direct benefit of Indian people.

The Coopers & Lybrand study confirmed the accuracy of this analysis, but drew attention to the possibility of reversing this trend by dispensing with the Department's advisory and monitoring services which, as they noted dryly, "are little appreciated by the Indians". (Section 3 & 4, p. 51) In the British Columbia region, they reported, the total number of departmental staff had been reduced after administrative responsibility was transferred to Indian bands, but 100 people responsible for band and local government had been added. Their conclusion was that "a further reduction in staff is not likely to occur unless the federal government changes its approach to devolving reponsibilities to Indians". (Section 3 & 4, p. 50) At the same time they noted that Indian bands that had taken on these new reponsibilities had increased their staffs by approximately the same number.

Costs of Present Accountability Processes

In addition to these administrative, advisory and monitoring costs, there is the cost of accountability. The Committee directed Coopers & Lybrand to pay special attention to the cost and utility of the complex accountability systems set up by the Department for planning, budgeting and disbursing funds from Treasury Board to DIAND headquarters, from headquarters to the regions, from regions to districts, and from districts to bands—with accountability flowing back by the same route. A massive system controls this process. Moneys for Indian bands appear in the departmental estimates under separate activities. The Department is expected to demonstrate that funds allocated to an activity are actually spent on that activity. This results in an unnecessary mountain of paper work.

The documentation appropriate to ensuring accountability between Indian governments and their people could be produced on a single page. Now, when the documentation required by the Department reaches headquarters, it is volumes in size, and so complex that departmental officials say they do not have time to involve bands in the process of preparing budgets. There is little discussion with Indian people as to why funds are being spent and whether funds could be better spent.

The Coopers & Lybrand report described the current systems in considerable detail, both to explain why they had been established and to suggest that this level of complexity was totally unnecessary for Indian government.

> We have covered the accountability process from cradle to grave, not just the costs of *post facto* accounting to Parliament, because it is the government's planning and budgeting approach that is creating most of the increased costs of obtaining accountability information.
>
> . . .It is worth noting that small organizations like Indian bands do not need these complex and costly procedures. In fact, it is surprising how little they are involved in the Department's own processes. Government processes are largely a product of size. Where provid-

ers and recipients of government services have direct accountability relationships as they do in the case of Indian bands, simpler processes become possible. Therefore, the solution to significantly lowering the cost of present accountability processes is to isolate such funding from federal departments delivering services so that simplified accountability arrangements become feasible, particularly if unconditional funding. . .is introduced. (Section 5, pp. 41-42)

The report proceeded to draw a number of conclusions with regard to the present accountability procedures:

> The emphasis on activity elements and variables in the new planning and budgeting processes is at cross purposes with the transition to Indian self-government. The budgetary processes of the government of Canada are designed to provide a national explanation of the ordering of spending priorities by focusing on program objectives, alternative activities or means to attain them, cost/benefit analyses, workload indicators to justify resource requirements, cost accounting and analysis, and value-for-money auditing and program evaluation to assess retrospectively what has been achieved. Small governments can substitute more inductive processes for these complex and expensive deductive approaches.
>
> The Department is giving relatively little attention to the controls imposed by Parliament through the vote structure, and Treasury Board through allotments, but program managers are increasingly tying strings on 'their' funds. The budgetary processes, allotments, management regime, contribution agreements, monitoring, reporting and auditing processes are all designed to reinforce the ownership of program managers, at the expense of giving regional directors-general, district directors and other general managers flexibility in satisfying band needs. Although nominally decentralized, the true test of any decentralization is the amount of decision-making authority given to field managers. Steps being taken by the Department to tie strings on its funding not only reduce the Department's ability to respond to Indian band needs, but also increase the cost of such processes. Furthermore, the Department usually permits surpluses to be transferred to cover deficits, so the sub-division only increases accounting complexities and creates uncertainty and friction without any apparent benefit. . . .
>
> Thus, in summary, we question whether the elaborate planning, budgeting, resource allocation, contribution agreement, reporting, monitoring and auditing processes are effective and therefore necessary. If simplified funding arrangements can be introduced, these costs can be significantly reduced. (Section 5, pp. 43-46)

Effects of Accountability Processes on Bands

At the Committee's request, Coopers & Lybrand also examined the effect of accountability requirements at the band and tribal council level. After describing the various procedures that bands are called upon to comply with, the report offered the following comments by way of conclusion:

> The Department is constantly changing coding and the format of forms to be filled out by the band. This introduces inconsistency in the format of financial information (which also introduces audit complexity) and results in band staff having to constantly learn new approaches.
>
> The requirement of fund accounting introduces complexity in daily bookkeeping. More knowledge is required to account for inter-fund transfers and more detailed ledgers must be maintained to account for each fund.

Neither departmental personnel nor Indian bands are satisfied that equity is being rendered under present processes. All assume others are treated more favourably and, therefore, if sufficiently sophisticated, are willing to take steps to beat the system;

A large portion of DIAND funding is either formula-determined or fixed in advance, so these elaborate resourcing and funding arrangements, which may be appropriate for economic development and band infrastructure requirements where managers have some flexibility, are being applied unnecessarily to the full range of departmental funding requirements;

Despite the long timespan preceding estimates submission to Parliament, consultation with Indian bands is generally inadequate. It is as if Treasury Board produced the estimates without consulting departments. While it is stated that this is because they do not want to raise Indian band expectations for funding that cannot be delivered, the bands feel that their true needs are not being communicated to Treasury Board and Parliament;

Capital planning processes provide for much greater involvement of Indians in the process, but this is the area where DIAND managers have greatest flexibility and the area that is treated as residual;

It would be wrong to accuse Parliament of causing most of the present accountability cost. Both parliamentary and governmental controls are secondary to those the Department imposes for its own purposes;

The program or activity orientation leads to duplication between districts, regions and headquarters, results in a multiplicity of forms and procedures and slows down the whole administrative process;

Signing authorities undermine the ability of districts and regions to deal with bands and they obscure accountability;

Despite the long timespan involved, many Indian bands did not know the amount of their funding until after the new fiscal year had commenced, hardly a process that encourages either their solvency or accountability;

Despite this costly monitoring process, DIAND is hesitant to intervene until a band actually becomes insolvent;

There is a fundamental conflict between the monitoring and advisory roles of DIAND employees, and some Indians suspect they have a self-interest to see band local government fail;

Expenditure reports are often inaccurate and expenditures can be manipulated if necessary to conceal diversion of funds from one purpose to another. Financial transactions coded as to purpose are difficult to check or audit because often only the manager authorizing the expenditure really knows its purpose. This is why Treasury Board rarely uses the activity classification for purposes of imposing allotment controls;

Auditors have great difficulty in assuring the Department that funds are spent for the purposes approved. This is partly because of the difficulty of auditing such transactions, but it is also because they are uncertain about their responsibility to the Department. (Coopers & Lybrand Study, p. 48)

While reporting is required to be on a quarterly basis, for funding purposes bands often have to report on a monthly basis. Quarterly reports are probably adequate for internal purposes.

Some bands expressed concern that filling out statistical reports with information on case loads, claims processed, etc., required too much of their staff's time, detracting from their primary duties.

Most of the bands visited relied more on their auditors for advice and assistance than on the Department's band financial advisers, who provided only limited assistance, or were avoided because of their monitoring role.

Delays in getting contribution arrangements in place and receiving advances resulted in bands entering an overdraft position with their bank. This represented not only an interest cost, but a loss of credibility with the bank.

The present method of funding and the Department's disposition of surpluses and deficits introduces uncertainty at the band level with respect to budgeting and year-end position.

In general, the bands adequately recognize the need for financial reporting and information, and the need for retaining competent staff and providing training to them. The more sophisticated bands employ service bureaux or some form of computerized system to process accounting information with a view to providing data more efficiently and increasing its timeliness. In many regards, these bands are facing the same types of problems and handling it in the same way as private sector entities of comparable size. There is no reason why bands cannot cope in the same way, ranging from having their auditors write up their books to automated system of accounting. Skills and services are available from the private sector if they can afford to hire them. (Section 5, pp. 47-49)

Need for New Funding Arrangements

Coopers & Lybrand consulted with federal and provincial officials and with members of band and tribal councils in preparing their report. All were in agreement "that something needs to be done and [they] are looking to the Special Committee for solutions". The Joint Council of Chiefs and All Chiefs' Budget Committee of the Assembly of Manitoba Chiefs, as well as the Assembly of First Nations, have examined the problem in detail and forthrightly expressed their hope for change:

> This Committee has a responsibility to report on this issue and to recommend a complete overhaul of the government's fiscal priorities and approaches to devolution. You must choose whether you wish to see present trends continue, in which case the result will be a continuation of policies of administering proverty and despair, or whether you wish to see movement toward genuine self-government in which case completely new fiscal relationships are required between the government of Canada and Indian people. (Joint Council of Chiefs and All Chiefs' Budget Committee of the Assembly of Manitoba Chiefs, Special 3:55)

The Minister of Indian Affairs and Northern Development, the Honourable John Munro, indicated what he sought from the Committee in this area:

> The Committee somehow has to come up with a new set of ground rules that will be acceptable to Parliament for the handling of public moneys. (Sub 2:33)

> The Indian population continues to suffer from the negative aspects of the present relationship. Until we come forward with remedies, the Indian communities will not be in a position to enjoy long-term benefits from the expenditure of public moneys. The sense of frustration will only increase. (Sub 2:17)

30. The Committee is entirely convinced that Indian self-government must be supported by new funding arrangements that would enable Indian First Nation governments to decide how best to meet their peoples' needs.

Committee members were particularly impressed with two observations made in the Coopers & Lybrand report:

- The present departmental rules are appropriate for agents, not for governments.
- Funding mechanisms are the key to reducing administrative and accountability burdens.

While expressing support for grants to Indian governments as a way of reducing this administrative and accountability burden, Coopers & Lybrand stressed, and the Committee agrees, that "if accountability is to be reduced, Parliament's expectations of the Minister must also be changed". (Summary report, p. 41)

Coopers & Lybrand concluded its report to the Committee with the following observation:

> We recognize that the departmental position reflects appropriate concern for obtaining value for public monies expended, as well as a fear that Indian bands are not ready for full self-government. Nevertheless, our findings suggest that present administrative and accountability processes, despite their great costs, are not succeeding in preventing the very things that the Department is worrying about. Thus at issue is whether Indian band accountability to their people will produce worse or better results. We are confident that the portion of total funding that needs be dedicated to administration and accountability can be reduced.

The Committee strongly endorses the following conclusion of the Coopers & Lybrand study:

> Whether programs will be more effectively delivered and abuses prevented will depend on the quality of the accountability processes of the Indian bands themselves, including the leadership they put in power and the administrators they choose. The administrative and accountability processes of the government of Canada are not processes Indians either need or can afford, so it is time they start to develop their own processes according to past traditions and the experience they will gain by actually doing it. Rather than the Department deciding whether bands should assume self-governing responsibility based on its criteria, members of each band should be allowed to balance the risks against the benefits they might gain. (Summary report, pp. 41-42)

Basic Requirements of New Arrangements

The two major deficiencies identified in the Committee's examination of current funding arrangements for band councils are the retention by the Department and the federal government of control of all policy and programs and the requirement that bands account to the

Minister of Indian Affairs for all expenditures. As has been noted several times in this report, these conditions and requirements frustrate any movement toward self-government.

31. In the Committee's view, self-government requires that Indian First Nation governments be free to make policies and to set their own priorities. To ensure that they exercise such powers responsibly and that the people in turn are protected against wrongful use of these powers, these governments must also be accountable to those people.

Indian witnesses saw both these needs clearly:

> Bands must have the resources and discretion to set their own priorities, set their own needs, and the financial ability to manifest those priorities. In your report to Parliament, I would appreciate your stressing this fundamental prerequisite to the development and enhancement of Indian government. (Grand Council of Treaty No. 3, Special 1:94)

> Accountability should be to the members of the affected Indian government. (Indian Association of Alberta, Sub 11:106)

The Committee directed Coopers & Lybrand to examine alternative funding methods and to suggest arrangements appropriate to Indian self-government, bearing in mind that the greater part of the funds required for the operation of Indian First Nation governments would have to be voted by Parliament—either by appropriation or by statute—and paid out of the Consolidated Revenue Fund.

Coopers & Lybrand systematically reviewed the parliamentary and governmental requirements under present statutes and regulations for granting appropriation authority. They also described the differences between grants and contributions, commenting on the Treasury Board rules relating to them and how the Department of Indian Affairs and Northern Development interprets and applies these rules. They examined various funding arrangements by governments and between governments, looking particularly closely at federal-provincial fiscal arrangements. Finally, they considered the financial systems under which Crown corporations and various external aid agencies, both public and non-governmental, operate. In their review of intergovernmental financing, they turned to the Rowell-Sirois Commission, which had strongly criticized "the conditional grant... [as] an inherently unsatisfactory device... We believe it to be more costly... [and it] unquestionably leads to delay and to periodic friction."

Indian witnesses brought a similar message to the Committee:

> We urge the discontinuation of contribution agreements. I urge your Task Force to recommend as a priority that Treasury Board develop, in close consultation—I repeat, in close consultation—with the Indian people, a creative and original procedure by which transfer grants may be provided to our bands and tribal councils. (Grand Council of Treaty No. 3, Special 1:95)

Establishing Accountability

If Indian governments are to be established, they will have to be accountable to their own people, and accountability to the Department will have to end. It is impossible for a government to be fully accountable to two entities on a matter so basic as the spending of public moneys.

Arrangements that band councils now have for the transfer of funds require councils to account to the Department in great detail on the expenditure of these funds. Coopers & Lybrand noted that, in addition, even where grants are used, the Department has made a practice of insisting on extensive conditions. Normally, such grants to non-Indian entities involve only "limited accountability". (Summary report, p. 19) In the opinion of Coopers & Lybrand,

> while the financial control requirements for contributions may be appropriate for payments to individual persons or companies accountable only to themselves, the grant approach is more appropriate for self-governing Indian bands who have their own accountability to their members. Redesignation of funds now appropriated as contributions so that the accountability arrangements for grants are permitted, and removal of many of the conditions now imposed on grants, would also greatly lighten the present administrative burden.

Coopers & Lybrand went on to recommend that:

> DIAND rules for funding Indians ought to be revised to better recognize what is appropriate under a concept of Indian self-government. Instead of negotiating contractual type agreements which are appropriate for agents administering a program on the Department's behalf, the Department should adopt a more comprehensive approach whereby the bands identify their total requirements as part of their own budgetary processes, with federal funding being determined for all programs based on a single and much simpler agreement. (Section 9, p. 37)

An agreement between the federal government agency responsible for disbursing the funds and each recipient Indian government would thus be necessary. Each agreement would state the amount of the grant, indicate broadly what government functions it was intended to cover, and call for, as a minimum, an annual audited financial statement, prepared by an independent auditor, confirming that the funds had been expended for the agreed purposes. But within these broad parameters, each Indian First Nation government would be free to allocate the funds as it judged best according to its own priorities and policies.

The responsible use of funds can best be ensured if internal accountability systems form an integral part of the new Indian governmental structures. The Committee considers such arrangements to be crucial and for this reason recommended earlier that federal recognition of each Indian government should only be accorded if its people have put adequate systems in place. For the same reason the Committee would strongly urge that grants be made only to Indian governments whose effective internal accountability arrangements have been recognized in this way.

The transfer of federal funds to Indian First Nation governments to fulfil agreements requires parliamentary approval. If a system of grants is introduced, however, the Committee would not expect a federal minister to be held accountable by Parliament for the way funds are spent by an Indian government, just as federal ministers are not held to account for the way provincial governments spend federal equalization payments. This is a very important principle. In Canadian parliamentary practice a grant has legislative force, and Parliament takes full responsibility for the payment. This is what makes the grant so well suited for Indian self-government.

Source of Funds

Indian witnesses frequently gave reasons for federal payments to Indian governments being a matter of entitlement:

> We ask you to consider the justice of our situation. In signing treaties, we have never surrendered our sovereignty or our resources. If we had controlled or even shared in the resource development of our area, we would not be in our present position today. (Rainy Lake Regional Tribal Chiefs, Special 1:19)

> The First Nations have already made a one-time-only contribution of resources to Canada sufficient to capitalize a fund for current payments. (Assembly of First Nations, Special 9:11)

> Parliament and the government of Canada [should be] committed to the principle of making statutory payments to ensure that the Indian governments of the First Nations have sufficient revenue to provide reasonable and comparable levels of public and social services as guaranteed by the treaties in establishing clearly the fiscal obligations of the federal government. (Federation of Saskatchewan Indian Nations, Special 12:135)

32. The assets now controlled by Indian governments are not sufficient to support those governments. It is the Committee's hope and expectation that claims settlements, Indian control and development of their land base, new arrangements for resource revenue-sharing and other long-term entrenched financial arrangements would in due course provide Indian First Nation governments with assured funding. In the interim, grants will be necessary and are justified. Nevertheless, the Committee does not wish to see its advocacy of transfer payments reduce the pressure for progress in settling these other matters.

The federal government is already transferring money to Indian band councils to cover these costs, under arrangements that are inefficient and costly and threatening to become more so. A new system of grants, which need not cost the Canadian government any more than is now being spent, would reinforce self-government by Indian First Nations, and the funds would be spent more productively.

Canada has a tradition of sharing the national wealth. For many years a system of federal equalization payments to those provinces whose revenues fall below the national average has been elaborated to permit poorer provincial governments to provide a minimum level of services. The principle of equalization payments has now been entrenched in the Constitution. In addition, federal funds are transferred to provinces to support health care, hospital services and post-secondary education. Although Established Programs Financing was historically tied to open-ended health and post-secondary education costs, the federal government subsequently decided to put a limit on its payments. Since then the federal and provincial governments have been divided over the provinces' right to spend the money as they wish.

It is important to note how these payments to provinces are determined and made. Every five years the federal government submits legislation to Parliament to provide a statutory basis for annual payments under these programs. The Committee believes that a comparable practice would be appropriate for Indian First Nation governments and could be expected to be more productive and acceptable than the present arrangement. Witnesses indicated that they favoured such a mechanism:

> We require an end to the current financial arrangements, which are totally unrelated to any rational process of economic development. We require an arrangement for equalization payments with a built-in adjustment factor similar to those presently enjoyed by the provinces, which, in the aggregate, have already reached a development stage far above ours. (Blackfoot Band, Sub 8:90)

The comparison with treatment of the provinces occurred frequently during the hearings:

> If we compare these transfer payments with those received by provincial governments, there are rather startling differences. Provincial equalization payments are untied moneys, that is, the provincial governments have full authority to determine how these moneys will be spent. Very few of our transfer payments are untied. We are controlled to a degree that no provincial government would tolerate. (Indian Association of Alberta, Sub 8:26)

The principle of federal grants is, in the Committee's opinion, fully justifiable. The Committee agrees with the testimony of Indian people that they are not receiving charity. Indian people are entitled, at the very least, to a level of services received as a matter of course by Canadians.

33. The Committee recommends that future federal payments to Indian First Nation governments be in the form of direct grants. Such payments should be made to all Indian First Nation governments recognized by the federal government as being accountable to their people.

The Committee considers it necessary to make explicit a point implicit in its advocacy of this arrangement. Once an Indian First Nation government was recognized by the federal government, with an adequate system of accountability in place, that government would be entitled to funding in the form of a grant. The First Nation government itself would decide whether to accept this grant, balancing the risks of the decision against the benefits and assuming responsibility if it decided to accept the grant.

Funding Principles

The Committee envisages that recognized Indian First Nation governments would receive a single payment for government operations and the delivery of all services. Under this system the funds would not be earmarked; for example, funds for health care would no longer be provided separately. Each Indian First Nation government would decide how to allocate its funds among social services, health care, housing, education, and other programs.

Similarly, Indian First Nation governments would be free to choose the mechanism for providing services. It can be assumed that Indian First Nation governments would provide many governmental services themselves. Alternatively, they could contract with a provincial government, a municipality, a private agency, a tribal council or even the federal government. In the case of medical services, for example, Indian First Nation governments might find it more suitable to contract with an area medical facility. The essential principle is that each government would make its own decisions and agreements, applying its own values and standards, rather than having them imposed from outside.

An exception to the single payment concept should be made for economic development and for funding to correct serious deficiencies in basic community infrastructure. In these areas, needs and potential vary, and a different basis for disbursing the funds is justified.

At present, apart from core funding for band councils, the federal government, through a variety of channels, makes payments direct to tribal councils, to the Assembly of First Nations and to numerous other Indian organizations. Once the new funding arrangements are in place, Indian First Nation governments should decide what powers and what financial resources they are prepared to provide to entities such as tribal councils and regional, provincial and national organizations. But until the new arrangements are in place, basic needs are met, and moneys are more readily available for political funding, the transition should be effected slowly.

Special federal programs available to all Canadians as individuals should also be available to individual Indian people. An example would be payments for installing insulation in older houses, which are paid to any Canadian who takes advantage of the legislation, although that person must conform with the conditions of the program and must make an application. In such instances, as well as for national programs such as unemployment insurance, the Committee concluded that people of the First Nations should be eligible in the same way as other beneficiaries.

A few witnesses advocated the appropriation of special funds to cover the salaries of Indian government officials. If the salaries of officials of Indian First Nation governments were funded separately, the accountability link between the people and their officials would be weakened. In the Committee's view, decisions on salaries should be made by each community.

The Committee believes that it would be essential in the early years to ensure that training requirements were taken into account in determining the financial needs of Indian First Nation governments. The situation of Indian peoples has not permitted the development of a cadre of leaders and administrators. With Indian people assuming control of their own affairs, it can be assumed that they will want training programs, and it is important that they have the means to obtain them.

Disbursing Funds

The Committee has documented the problems resulting from the present funding arrangements under which the department disbursing funds is also responsible for advising on and monitoring their use and for the delivery of services. The answer would appear to be to separate funding from policy and program delivery, similar to the practice adopted by several provinces for funding universities and municipalities. This was the advice of Coopers & Lybrand, who recommended a funding agency that had "no program delivery or other responsibilities that might be in conflict with its funding responsibilities."

An approach to disbursing funds consistent with the Committee's advocacy of government-to-government relations would be for each Indian First Nation government to negotiate directly with the federal government. While this would allow for flexibility and diversity in meeting the separate needs of Indian First Nation governments, the negotiations would be extensive and time-consuming. With hundreds of separate agreements to work out, this approach could be unfair to some, and the more sophisticated Indian First Nation governments could be at an advantage.

34. The alternative favoured by the Committee would be to fund First Nations government operations through a modified per capita formula. This would ensure equity and greatly facilitate disbursement. It would be important to elaborate a formula that provides for adjustments, since the relative needs of communities vary. The Committee is convinced that an acceptable formula could be worked out between the federal government and Indian First Nation governments. In addition, there might be funding for exceptional needs.

The Committee is aware that determining the total amount of money to be transferred annually to Indian First Nation governments would not be easy. In the Committee's view, an appropriate yardstick would be to allocate sufficient funds to provide governmental and social services comparable to those enjoyed by non-Indian people living in neighbouring communities.

Provincial government entitlements under Established Programs Financing (EPF) are based on per capita calculations, which now include Indian residents of provinces. Yet several witnesses claimed that Indian people did not get their fair share of benefits from these funds. The Committee urges that this matter be examined carefully, including the idea of adding an EPF component to Indian funding and reducing the transfer to a province by a corresponding amount when transfer payments are being calculated.

Several witnesses advocated the creation of a Canada-First Nations Fiscal Arrangements Commission to negotiate the global amount of funding available for disbursement and to handle the problem of actually disbursing these funds to individual Indian governments. While convinced that the disbursement of funds to Indian First Nation governments must be separated from program delivery, the Committee does not wish to prejudice negotiations by recommending the mechanism for disbursing the funds.

There will certainly be a need for a minister—perhaps the Minister of State for Indian First Nations Relations mentioned earlier—with responsibility for acting on behalf of the federal government to negotiate the global funding for First Nation governments. On the Indian side, representatives of recognized First Nation governments would have to be designated as negotiators. Apart from settling on a global figure, the two sides would have to work out a broad division of the total figure between funds for government operations on the one hand and for economic development and correcting serious infrastructure deficiencies on the other. Finally, the two sides would need to establish a formula for determining the per capita payments.

Once the global amount had been established, the broad breakdown between categories worked out, and a formula for allocating funds among recognized governments devised, the actual disbursement could be handled by a small agency of the federal government or by a fiscal arrangements commission. The specific tasks of such an agency would be to make payments to First Nation governments, to receive the annual audited statements of recognized governments, and to consider questions arising out of the application of the formula.

With regard to funds for economic development, some witnesses suggested an economic development agency to make funds available to enterprises, agencies, co-operatives or Indian First Nation governments for economic development. Possible models mentioned included the Canadian International Development Agency (CIDA), the International Development Research Centre, or a non-governmental organization. The Committee decided not to make

a specific recommendation. The Coopers & Lybrand study criticized the CIDA model on the grounds that CIDA suffered from many of the same deficiencies as the Department of Indian Affairs and Northern Development. Coopers & Lybrand nevertheless recommended that a separate agency be established to disburse economic development funds. The Committee felt that the structure and mechanism for doing this should be developed in negotiations between the federal government and Indian First Nations.

It is most important that Indian First Nation governments have assured funding so as to be able to make firm long-term plans. The same arrangements that prevail for equalization and Established Programs Financing payments to provinces—a statute providing funding authority for a five-year period—would seem to be the most appropriate. Such an approach would lead to the automatic transfer of funds to the agreed funding agency during the five years covered by the legislation. Indexing could cover such factors as inflation and population growth.

35. The Committee recommends that the global amount of funding for First Nations government operations, for economic development, and for the correction of serious infrastructure deficiencies be determined in negotiations between the federal government and designated representatives of Indian First Nations. The Committee further recommends that Parliament be asked every five years to approve the global amount of funding by means of statute. The structures and mechanisms through which the funds for each of these three categories would be disbursed should also be settled by negotiation.

Funding of Bands Not Opting for Self-Government

The Committee anticipates that some Indian bands might not wish, at least initially, to exercise the responsibilities involved in self-government. Some might decide to defer such a step until they have had the necessary training and have staff and systems in place. In such situations witnesses suggested, and the Committee agrees, that special funding be provided for development and training. To ensure that government services are available, the Committee proposes that any such band join with the federal funding agency to contract with a tribal council, another Indian government, a private enterprise, or the Department of Indian Affairs and Northern Development to provide the services.

Conclusion

Canada has developed innovative fiscal arrangements to ensure that provincial governments are able to offer roughly comparable services to Canadians in all parts of the country. There is no reason to be any less innovative in funding Indian First Nation governments, whose diversity is even greater. In proposing a system of grants to be disbursed by a new and jointly agreed upon distribution agency, the Committee believes that it has recommended fiscal arrangements that meet the needs of the situation. Nevertheless, the Committee is well aware that, as Chief Jim Bear said in his testimony, "the precise mechanism and level of transfer is a matter for political negotiations between Indian people and the federal and provincial governments. . .". (Special 3:63)

The Committee is urging this approach for two important reasons: first, because such a funding arrangement is essential to reinforce and provide for the exercise of Indian First Nation self-government; and second, the Committee believes that this approach would reduce unnecessary administrative costs and represent the best use of scarce funds. The needs of Indian First Nation governments are great, and there are bound to be limits to the funds the federal government will be able to provide. It is important to have in place fiscal arrangements that will make the available funds reach as far as possible.

LANDS

AND

RESOURCES

CHAPTER 8

LANDS AND RESOURCES

Introduction

For Indian people, land is much more than a source of profit and wealth creation or a place in which to reside temporarily. Their attachment to the land is part of a spiritual relationship with the universe, its elements and its creatures. Indian people see themselves as caretakers of the land and its resources. Land is thus a prerequisite for and vital to self-government. Indian people assert that their rights flow from their relationship with the land. Aboriginal title pertains to the historical connection that Indian people have always had to the land and to the interrelationship of land with all aspects of life—language, culture, and economic and political systems.

> Our people have owned and cared for the land since time immemorial. This is why we demand that aboriginal title must be recognized in the Constitution. The land, language, and laws of our culture cannot be separated. Everything for the Nishga people—our way of life, our means of earning income, our relationships with each other and with the rest of the world—all are based on our ownership of our land. This is why our people say that self-government is our right, as a collective people, to protect our lands, to protect our culture, and to pursue and strengthen our way of life in every respect. (Nishga Tribal Council, Special 7:31)

In some parts of Canada, treaties were negotiated with Indian governments so land could be settled. The signing of treaties affected aboriginal title. Indian people see treaties as affirming rights and establishing the sharing of land and resources, while non-Indian governments view treaties as extinguishing Indian rights to land and resources.

> When the white people came to this country they sought the right to occupy some of our lands to till the soil and provide for themselves, and wanted to formalize our consent through a treaty. Our chiefs, acting in their rightful capacity as the leaders of Indian governments, were prepared to offer such consent in a formal treaty. All the chiefs agreed to

> do was to allow the white people to live on the land and to till the soil. Our forefathers agreed to give up no more than this in the treaty agreement. (Yellowhead Tribal Council, Sub 10:32)

Reserves

Indian witnesses considered the non-Indian view of reserves as property provided to Indians by the government to be historically inaccurate. Rather these were areas that Indians reserved for themselves under treaties, or were part of lands that they never surrendered:

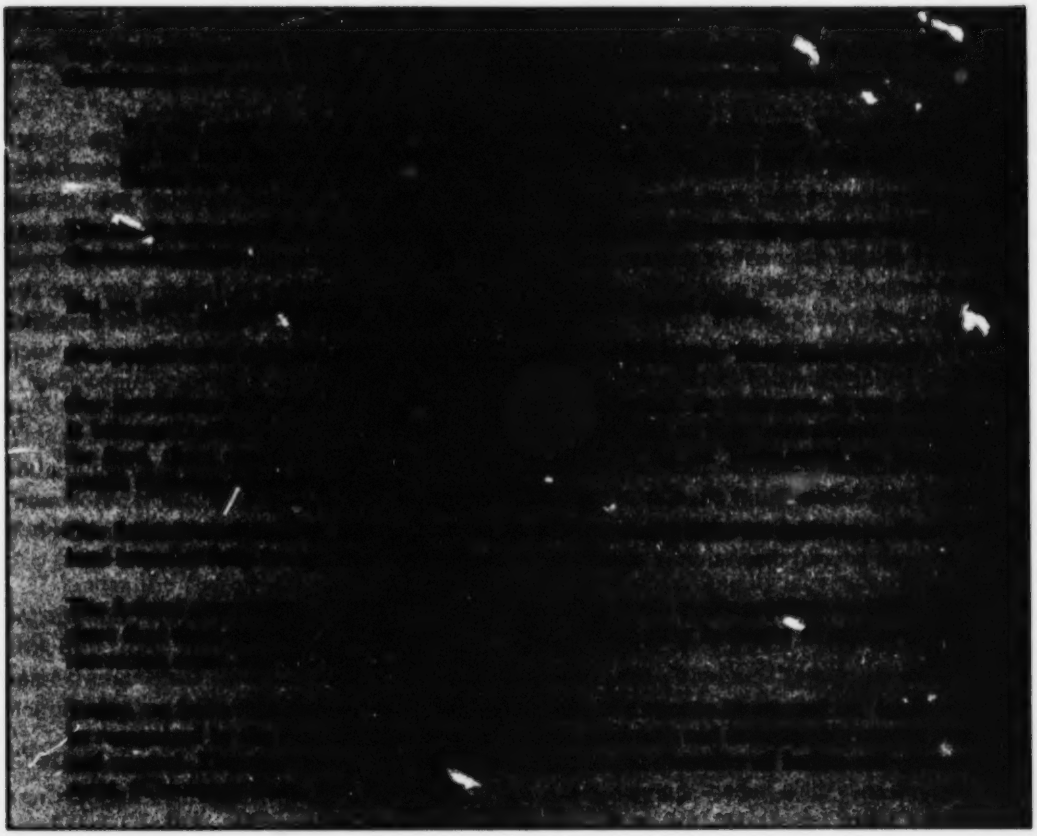
> When we established those reserves, those were established under the Proclamation and the treaty process, and they were reserved lands, reserved with sovereignty intact for generations by our people. They were not lands that were acquired by the Crown and granted to us later. The Crown did not have any land to give to us at the time of treaty; we had all the lands. We granted you conditional access to those lands. (Federation of Saskatchewan Indian Nations, Sub 16:18)

Non-Indian perceptions have led to a legal framework—found in the *Indian Act* and in court decisions, beginning with the *St. Catherine's Milling* case—that reflects an entirely different interpretation.

The *Indian Act* describes a reserve as "a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band". In the *St. Catherine's Milling* case, the Indian interest in land was characterized as a "mere burden" on provincial title to land. While other cases have described the Indian interest in stronger terms, the courts have held that the provinces had the ultimate title to reserves, once the Indian interest was surrendered. That underlying approach has been altered by federal-provincial agreements in all parts of Canada except Quebec and Prince Edward Island, with the result that full rights to manage reserve lands, both before and after surrender, are with the band and the federal government. Those concepts do not accord with the Indian view that full rights for reserve lands lie with them.

The legal concept of "reserve" under the *Indian Act* and departmental policies in regard to land rights have created problems, even for Indian communities in isolated locations. For example, the Committee held hearings in Lansdowne House, in an unsettled part of northern Ontario. The community is situated on land not recognized as a reserve, although Indian people have always lived in the area. The community has been built by the Department on a swamp, distant from wood supplies, and where drinking water is contaminated. The people of Lansdowne House have been unable to get permission to relocate nearby:

> . . . the province of Ontario views our lands as Crown lands and therefore under its ownership and control. The province wants us to get approval from them and the proper provincial permit in order to use our own lands. The Department of Indian Affairs sides with the province in our dispute over lands because it is the view of the government of Canada that the Nishnawbe-Aski surrendered their lands except for the reserves. The Department of Indian Affairs is therefore reluctant to help us in our relocation because we have a land dispute with the province. (Central Tribal Council, Special 37:12)



The federal government's justification for retaining the power to manage reserve lands, as set out in the *Indian Act*, is that this is necessary to prevent non-Indians from taking advantage of Indians. Historically, it was feared that Indians might make improvident dispositions of their lands. Yet, as the Committee's research study on the trust relationship revealed, the federal government disposed of huge tracts of land without necessarily considering the best interests of Indians.

In some instances bands' land bases were substantially reduced through involuntary surrenders of land for such purposes as railways, highways, dams and army bases. The Kitsumkalum Band, for example, described how it had lost half its reserve to rights of way and leases. (Special 7:70) Chief Phil Goulais of the Nipissing Band described other instances where land surrenders had resulted in the loss of land.

> Many of the bands have lost land in the last number of years by different means. Some of them are called surrenders of land, and some could be deemed invalid. There have been shoreline erosions of the bands' property, caused by power project damming, the raising and lowering of water levels causing shoreline erosion and flooding. Those are specific items that have contributed to the loss of our land base for many of our bands. (Special 14:54-55)

The *Indian Act* reveals many non-Indian assumptions about the relationship between Canada and Indian people. The Act describes how reserve land can be alienated (an all-

encompassing legal expression meaning the disposal of land by sale, lease or any other means), but does not say how bands can acquire land. It was assumed that the Indian population would gradually decline and eventually disappear.

The *Indian Act* establishes a unique system of land-holding on Indian reserves; it was intended to promote the transition from a collective system of land-holding to one emphasizing individual ownership similar to that used by non-Indians. A band member may obtain the right to use and occupy a portion of the reserve through an allotment system. Under section 20(1) of the Act he may possess land allotted to him by the band council and approved by the Minister. A Certificate of Possession is issued by the Registrar of Indian Lands to the individual, who must use the land in accordance with band by-laws and the provisions of the Act. The Act also provides for the use of land on a temporary or conditional basis. In such instances, a Certificate of Occupation allows an Indian to occupy the land for a renewable 2-year period.

Many bands do not use these certificates or other *Indian Act* provisions regarding land-holding. They follow band custom or make allotments at the pleasure of the band council. Some bands explained that they did not use the allotment system because the legislation is vague and ministerial discretion is excessive.

> The allotment system is little understood and much ignored by bands. This creates confusion between the rights of the individual allotee and the collective rights of his or her band. . . .
>
> The system is described so badly in legislation, and is so subordinated to the discretion of the Minister, that it is in many cases impossible to establish priorities between the individual and the band or between the individual and the government. (Association of Iroquois and Allied Indians, Special 16A:7, 20)

More importantly, the allotment system is fundamentally different from the customary land-holding practices common to many Indian First Nations. Over the years, the balance of rights maintained through traditional practices has been disturbed by the operation of the *Indian Act* and federal policies. As well, tension has been created between the rights of existing members of an Indian First Nation and the rights of future generations of members, who are also to benefit from the land and its resources.

The Committee is fully in accord with the principle that Indian First Nation lands should be under the control of Indian First Nations. Moreover, it is the responsibility of the federal government to manage its special relationship with each First Nation in such a way that each First Nation's lands will be maintained for its use.

> We would like title to our reserve lands. The recent decision of the Federal Court of Appeal in the Musqueam case says that the Department has no legal responsibility as titleholder. This is totally unsatisfactory, and the Department can have no legitimate reason for clinging to this title any longer. (Sechelt Indian Band Council, Special 6:97)
>
> We want to be assured that our lands will be recognized by the federal government to be completely and undisputably ours to own and control. That assurance must be *the first step* in the direction of Indian self-government. (Chiniquay Band, Sub 8:60)

36. The Committee is convinced that, in order to ensure that self-government becomes a reality, each Indian First Nation must have full rights to control its own lands in the manner

it sees fit. This would mean power to decide upon methods of land-holding and land management on reserves. Such areas should be recognized as Indian lands.

37. The Committee recommends that the federal government promote the constitutional change necessary to recognize in law full Indian First Nation rights to the lands, waters and resources of all areas now classified as reserves or in future considered as Indian lands. In the interim, the Committee urges the federal government and designated representatives of Indian First Nations to agree upon the measures now possible to achieve these objectives.

Indian First Nation Lands and Resources

Once these changes were made, Indian First Nation governments would exercise full control over the resources on reserves and would receive any royalties generated from them. This is consistent with the general thrust of this report that Indian First Nation governments should have exclusive jurisdiction over activities on reserves. Furthermore, Indian First Nation governments would be responsible for the use and management of these funds and would be accountable to their people for the disposition of such moneys.

Under the *Indian Act* much reserve land has been conditionally surrendered to permit leasing and development. In future, such matters would be under Indian First Nation control, and there would be no new surrenders. Indian First Nations would make their own leasing arrangements, and the basic legal status of the lands—that is, "Indian lands"—would not change.

For lands currently classified as 'conditionally surrendered' for uses such as shopping centres, golf courses or timber harvesting, there will need to be a review by representatives of the federal government and the Indian First Nation concerned. New agreements as to future management and jurisdiction should take into account other interests in the land, particularly those of lessees.

The land base of an Indian First Nation could not be sold off and become part of another jurisdiction; it would always remain under Indian First Nation control.

Should the people of an Indian First Nation decide that it is in their best interests to exchange, sell, or otherwise alienate their interests in lands or non-renewable resources, the Committee is of the view that the federal government should not interfere in this matter. The people of an Indian First Nation would ensure through their own form of government that they had made adequate provision for themselves and for future generations. In these circumstances, the Committee does not see the need for external constraints on the sale or mortgaging of these lands.

38. The Committee recommends that there be an official Registry of Indian First Nation lands. It would hold records of land under Indian First Nation control, to be distinguished from federal and provincial lands.

The combination of collective ownership by the First Nation and the jurisdiction of the Indian First Nation government leads to a unique situation. Indian First Nation governments serve not only in governmental matters but, in some ways, also represent their members' interests in assets owned in common. In this way, Indian First Nation governments are

different from municipal and provincial governments. This poses a special problem in regard to non-Indians living on Indian lands, who might feel that, as residents, they have a right to participate in the government of the community. Yet, as non-members, they do not share in the ownership of the assets administered by that government and have no right to a voice in such matters. Aboriginal rights should predominate over any claims of non-members to protection under the Charter of Rights. Only those people whom an Indian First Nation decides to include in membership should have the right to participate in the selection of that First Nation government or to participate in its governmental affairs.

> Indian reserves as they were set aside were meant for Indian people. As more and more non-Indian people move onto the reserves, it becomes more and more difficult. I am not talking only about non-Indian people, but also in terms of development. It makes it difficult for us to survive as Indian people, because along with these people come their own laws and regulations, whether it be through an understanding through the person who owns the land that they have rights on an Indian reserve—and the Charter of Rights could very well determine that. White people or non-Indians living on a reserve under the Charter of Rights may even have power and authority one day to elect the chief. They might have that power. (First Nations of South Islands Tribal Council, Special 4:54-55)

Indian Interests in Other Lands

39. Indian First Nation control of Indian lands is the first and most obvious move needed to promote self-government. Indians also call for recognition of certain rights based on treaties or aboriginal title to traditional hunting and trapping areas.

Indian witnesses asserted an interest in lands that have not been alienated from Indian control through a consensual process. Indian communities are not always located on these lands. They claim some rights because of original use and occupation of a much larger area. In addition they point to treaty provisions by which Indians intended only to share land, not relinquish it completely. Indian witnesses emphasized consistently that their rights did not end at the boundaries of reserves. Instead, emphasizing the need to develop mechanisms whereby Indian people could participate in the control and management of these lands and resources, they advocated a system of coexistence and not the exclusion of other interests.

The economies of many Indian communities have been threatened by the development of large-scale resource projects, logging operations, dams and irrigation projects launched with little or no involvement of Indian people. For example, Indian bands that hunt and trap, activities requiring a large land base, can be severely affected by a development such as a dam hundreds of miles away. Indian First Nation governments want to share in decision-making on actions that affect their lands and resources. With Indian First Nation governments in place, development on lands where Indians claim rights would thus have to be decided by all governments involved in the matter. Similarly, on questions of resource development, the interests and concerns of Indian First Nation governments would have to be taken into account by other levels of government.

40. In the past, external control has meant that Indian people have not shared fully in the financial benefits of revenues arising from development of such resources as minerals, oil and gas. These revenues could have a significant effect in the development of a viable economic base, enabling Indian First Nation governments to become self-sufficient.

Lands North of 60°

The people of the Indian First Nations in the North face a particularly difficult choice. They constitute a large percentage of the population and are considering alternatives to the reserve system as means of holding land. The resolution of land and rights disputes in the Territories is an opportunity and obligation for the present generation to be generous and honest and to ensure that the indigenous people of the North are the primary beneficiaries of development there, with a fair share of resources now and in the future. In doing that, the federal government will have to take into account the wishes of the indigenous people and recognize means of land-holding and control different from those used in southern Canada.

> The reserve system is neither desirable nor workable in the North given the large areas over which the Dene are asserting their rights. Lands set aside for exclusive Dene jurisdiction and use would be designated and protected under the terms of the aboriginal rights settlement, not under the *Indian Act*, and all other areas within Denendeh would come under the jurisdiction of whatever form of public government evolves. (Dene Nation, Special 28:48)

Restoration of the Land and Resource Base

An adequate land and resource base was seen as a prerequisite to self-government; Indian First Nations must have enough land for their members. Increased population through natural growth or the return of members now living away from reserves will put additional pressures on existing lands.

One significant factor to be taken into account is the possibility that Indian people reinstated by changes to the *Indian Act* may wish to return to their reserves. If large numbers of people move back, this will put pressure on the land base and community resources.

The Sub-committee on Indian Women and the Indian Act recommended reinstatement of Indian status under the *Indian Act*, upon application, for all women who had lost status and for their first-generation offspring. The Sub-committee noted that reinstatement would result in increased band membership and in possible demands for additional land and resources.

Many witnesses spoke of the need for additional land to accommodate the increased population that could result from reinstatement.

> In those tribes where there is need for reinstatement, resources including land and financial, should be made available to assist the process. (Carrier-Sekani Tribal Council, Special 20:36)

41. The Committee recommends that any reinstatement of members mandated by the federal government should include a review to determine the additional resources necessary to cover the needs of reinstated people and to recommend a mechanism to provide them.

As indicated in the Committee's economic foundations study, an adequate land base is "fundamental to future economic development, self-reliance and self-government". (p. 113)

> Primarily, there has to be an absolute connection between land, resources and self-sufficiency in Indian government. Without land, without resources, there is no self-sufficiency;

> and without being self-sufficient, there is no Indian government. So it is our premise that we have to have the land before we can actually make the advancements in the resource development to attain that self-sufficiency. (Association of Iroquois and Allied Indians, Special 16:23,32)

In earlier negotiations on lands for reserves, there was a tendency to set aside land in rural or remote areas. In some instances Indian people themselves preferred these locations, but times and circumstances have changed. Indian First Nations should not be limited to a land-based economy if that is not their wish, but should be free to pursue a variety of economic ventures. Expansion of the land and resource base could include expansion into urban, rural or isolated locations as determined by individual Indian First Nation governments.

Over the years Canadian governments have responded negatively to land claims made by Indians, often maintaining that there is no unsettled land available or going to great lengths to rebut the rationale for the claims. Unfortunately this negative attitude to Indian land rights has been shared by too many Canadians.

It is essential to point out the false premise and injustice of this response. While Canadian governments have been slow to find land to settle the Nishga claim, the B.C. cut-off claims, the Prairie entitlements, and many others, they have had no trouble finding land for much larger national parks, defence bases, hydro developments, airports and resource projects. Canada has set aside 130,168 square kilometres for national parks, yet only 26,335 square kilometres for Indian reserves. The Committee does not dispute the need for parks, defence bases and airports; but surely the land rights of the original inhabitants of this continent deserve as much or more attention. Canadians who consider themselves just and fair must reconsider their views on this matter. The government should commit itself to this endeavour with at least the same effort it devotes to finding land for government projects.

One of the most distressing problems the Committee encountered were bands that had no reserves; the Lubicon and Conne River Bands are two examples. Some were living on Crown land, others were scattered. There were also bands that had land, but whose members had moved away because of earlier DIAND policies denying them services, housing, schools, and roads.

42. The Committee recommends that the federal government give high priority to providing a land base for those Indian communities now without a reserve.

Other ways of increasing Indian lands include the fulfilment of outstanding treaty obligations. In some cases negotiations over the choice of a reserve have been going on for decades. It is now time for action to settle these oustanding entitlements. The land selected should be satisfactory to the Indian First Nation government concerned.

43. The Committee recommends that the federal government establish as a priority the fulfilment of land entitlements and settlements of other claims.

All claims should be considered promptly and settled fairly. Dissatisfaction with the current land claims policy and process was expressed thoughout the hearings; the following section of this chapter is therefore devoted to this significant subject.

44. The Committee recommends that the main way of expanding the land and resource base of Indian First Nation governments be through a just and effective land claims process.

After entitlements to land have been fulfilled and after land claims have been settled, Indian First Nations may wish to increase their land base further by buying additional land. Under the present provisions of the *Indian Act*, band corporations can purchase land, but this land is not considered to be "Lands reserved for the Indians".

The Committee agrees that Indian First Nation governments should be able to buy additional lands and that they would have ownership of such lands, but jurisdiction raises special problems. Should Indian First Nation governments wish to acquire jurisdiction over land they have purchased, this matter could be resolved only through trilateral discussion. Jurisdiction might be transferred if arrangements could be made to accommodate provincial interests. For example, provincial reluctance to transfer jurisdiction because of the loss of a local tax base on the land in question might be overcome through the guarantee of an *ex gratia* payment to cover the potential loss of tax revenue. In other instances, the cost of servicing the land might be greater than tax revenues, and a province might willingly agree to transfer jurisdiction. As well, joint jurisdictional agreements could be negotiated.

The Committee has recommended a system of per capita payments to cover the cost of government operations and additional funding for economic development and for correcting infrastructure deficiencies. The arrangements for federal fiscal transfers should be put in place as soon as Indian First Nation governments have been established and recognized. But the Committee attaches equal importance to the speedy introduction of a new claims settlement policy and process as well as to other measures to enhance the land and resource base for Indian self-government. The settlement of claims would provide an independent economic base for Indian First Nation governments and render them less dependent on federal financial support.

The Resolution of Claims

Many witnesses asserted that land claims settlements were essential to the exercise of self-government, in that they would provide an economic base.

> Until our land claim is recognized and until the government of Canada recognizes our land base and our territorial jurisdiction, Indian self-government will be an illusion. The government of Canada must seriously undertake to negotiate our land claims so that our people will have a land base upon which to build our Indian self-government. (Kanesatake Mohawk Nation, Special 30:136)

> Without land, without resources, there is no self-sufficiency; and without being self-sufficient, there is no Indian government. So it is our premise that we have to have the land before we can actually make the advancements in the resource development to attain that self-sufficiency. (Association of Iroquois and Allied Indians, Special 16:32)

The claims issue persisted for years before the federal government acted to recognize them. To illustrate their frustration, some witnesses quoted testimony before federal committees and commissions dating back to 1915 and earlier about situations that are still unresolved.

In 1974 the federal government established the Office of Native Claims within DIAND to negotiate the settlement of claims, which it considers to be of two types. The government has designated as 'specific' those claims relating to the administration of land and other assets and to the fulfilment of treaties—that is, claims relating to lands that had been part of reserves or that, by treaty, should have been set aside. 'Comprehensive' claims are those based on aboriginal title. Recent government policy statements on these claims are contained in two publications, *In All Fairness* and *Outstanding Business*. Witnesses were extremely critical of the government's claims policies. A witness described one of the publications as

> . . .written for the public in the corporate world, and created by a very slick process to create in the public mind a definition of what is fair; then, clearly, anything that falls outside that definition is unfair, unrealistic, not pragmatic, radical, etcetera. It is a very, very insidious document in that respect. (Nishga Tribal Council, Special 7:54)

Many witnesses objected to the fact that land claims policy and procedures are defined by government decision rather than by legislation. They pointed to the conflict of interest inherent in departmental control of a process set up to decide upon the rights and entitlement of bands whose claims arise from the actions or inaction of the same Department. Many allegations related to breaches of the government's trust responsibility to manage lands "for the benefit of Indians", questionable surrenders in which the role of DIAND officials is challenged, and failure to fulfil treaty obligations. Government legal opinions, which are not available to the band making the claim and cannot be challenged, determine both the validity of claims and eligibility for funding to pursue the matter further. When a claim is rejected, no substantiation is given. This process was condemned by Indian witnesses for its lack of independence from the federal government and for its unilateral imposition of conditions. Although many claims have been filed since the Office of Native Claims was established, few have been settled:

> The federal government right now is judge, jury, executor. They are everything rolled into one, and that is specifically the problem now. When negotiations break down there is no way we can arbitrate that situation. It is totally in the hands of the government to determine what they want to do with that process if we do not want to negotiate any further or if we fail to come to an agreement on negotiation. So anything where we could take some of the authority away from the federal government in that dealing would be of benefit. It would be a positive step. (Association of Iroquois and Allied Indians, Special 16:25)

> It is a strange rationale to allow a bureaucrat to have the power to decide on what is and what is not a legitimate land claim. In the policy established for the settlement of specific land claims, it is the lawyers of the Department of Indian Affairs and the Department of Justice who determine the merit of the claim. In this way, they are both defendant and judge. To further complicate matters, the opinions they write regarding the claims are confidential. Therefore it is safe to state that they have taken on the role of protecting the federal government and the provinces from claims that may be filed by the First Nations. Claims that they feel have merit they will negotiate out of court, although the compensation they would award would be in proportion to the strength of the claim. So in this case it would be best to go to court in order to ensure fair treatment. (Restigouche Band, Special 22:10)

Strong criticism was directed at limitations imposed on the filing of claims. Claims related to treaties or other events prior to Confederation cannot be considered under the present policy. Legitimate grievances may not be entertained if the claims have been superseded by law, a strange concept under which a law passed since the situation arose can be asserted to have erased the government's lawful obligation.

> This concept of superseding by law will unilaterally abrogate the Micmac title, which was protected by the 1752 Treaty of Friendship and Peace and the Royal Proclamation of 1763. This policy violates a principle of international law as set out in *The Declaration of Principles for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere*, passed by the international non-governmental organization, Conference on Discrimination Against Indigenous Populations in the Americas, in 1977. (Restigouche Band, Special 22:11)

Objection was also taken to the fact that the resolution of land claims now rests entirely with the executive. It is neither open to parliamentary scrutiny nor is there access to the judicial system or an independent tribunal.

Witnesses pointed out that the current policy was developed without the involvement of Indian people:

> This policy was developed internally by the Department of Indian Affairs, utterly disregarding in its formulation the strong recommendations of Indian organizations across Canada, and especially Ontario, regarding principles and mechanisms for claims settlement. (Onegaming Band, Special 1:49)

In the view of Indian witnesses, claims should be open for periodic review and should include settlements of political as well as land issues. The federal government, on the other hand, states that claims are to be settled finally and should not include issues of political development. Nonetheless, in Yukon and the Northwest Territories, there have been political discussions as part of the land claim negotiations.

The research study on the economic foundations of self-government seriously questioned the use of the James Bay and Northern Quebec Agreement as a model for land claims settlements. While the Agreement has brought benefits to the Cree, there have also been major problems, particularly in implementing the Agreement. In keeping with the principle of respect for the diversity of Indian nations, the Committee concludes that there should be no single model for claims settlements.

45. The Committee is firmly convinced that there must be a new policy to promote the fair and just resolution of outstanding claims consistent with the protection of aboriginal and treaty rights in the Constitution. The federal government and designated representatives of Indian First Nations should undertake negotiations regarding a new claims settlement process to be set out in legislation.

46. While the details of the new policy and process should be decided through bilateral negotiations, the Committee does wish to set out certain principles that should be included.

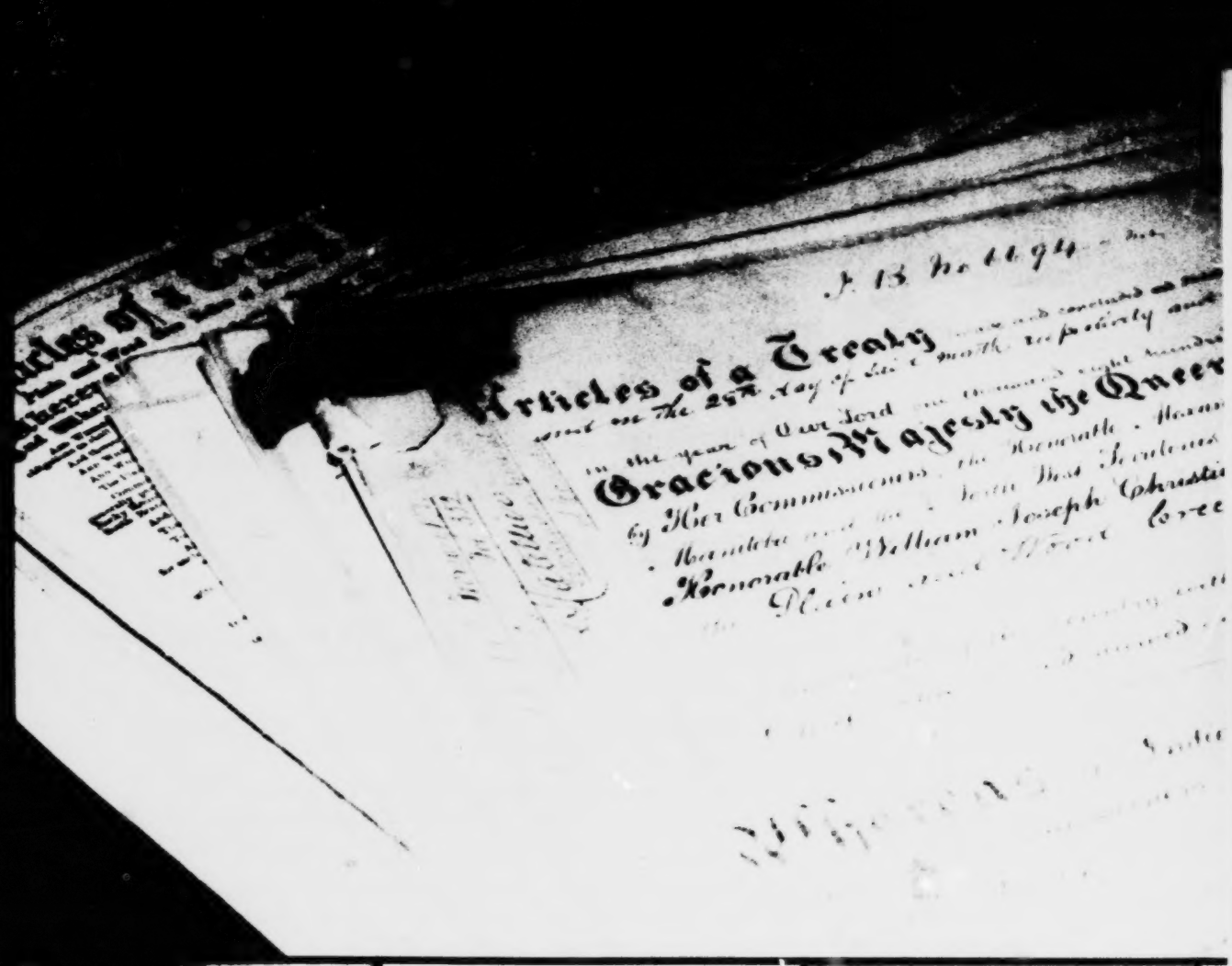
47. It is imperative that the new process be shielded from political intervention. It should be set out in legislation so that it cannot be readily changed. Claims should be negotiated between the government and the claimant with a neutral party to facilitate the settlement. Where a settlement cannot be reached, there should be access to a quasi-judicial process. For Indian First Nation governments to participate effectively in claims negotiations, they must have adequate financial support. Finally, under the new policy, pre-Confederation treaties and other rights should be recognized, and claims should not be regarded as being superseded by law.

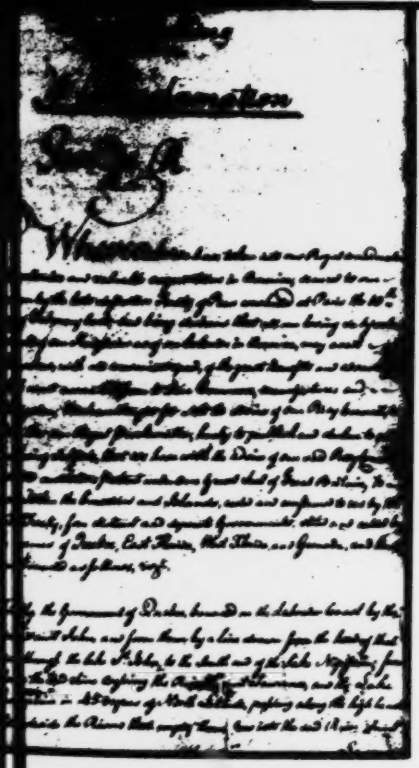
The Committee is also critical of the present policy of extinguishment in native claims settlements, whereby all residual aboriginal rights not specifically recognized in the settlement are terminated and extinguished. By contrast, the government's residual rights are not subject to extinguishment.

48. The Committee recommends that the doctrine of extinguishment be eliminated from the settlement of claims; settlement agreements should be limited to those matters specifically negotiated.

In the past the federal government has been slow in settling claims. The time has come to change this attitude by adopting an explicit policy of settling claims in a fair, just and prompt manner. Behind the policy should be the principle that Canada is obligated to restore a strong economic base to those who have shared their land and resources. Such an acknowledgement would recognize the original contribution of Indian people to the growth and development of Canada.

A federal decision to pursue a speedy settlement of claims would require the federal government to deal with the provinces. There should be every effort to involve the provinces where appropriate in co-operative efforts to settle claims. The claims process should also include periodic joint reviews so that new situations can be accommodated as they arise.





THE TRUST RELATIONSHIP

CHAPTER 9

THE TRUST RELATIONSHIP

The enduring nature of the special relationship, often described as a trust relationship, between "Her Majesty the Queen" and the Indian nations of North America is described in the following passage:

> It was, and continues to be, of fundamental importance to the Indian Nations that they treated with the Royal Majesty. The elders understood they were entering into a sacred relationship of trust with another sovereign which would endure the passage of time and governments. The duration of the promises and their inviolability was also important to the Royal Majesty's representatives who stated:
>
> > The Queen has to think of what will come long after today. Therefore, the promises we have to make to you are not for today only but for tomorrow, not only for you but for your children born and unborn, and the promises we make will be carried out as long as the sun shines above and the water flows in the ocean.
>
> (Memorandum of law presented by the Union of British Columbia Indian Chiefs, the Indian Association of Alberta and the Four Nations Confederacy at the time of patriation of the Constitution, Special 16A:17)

The Indian nations in the early colonial period entered into direct negotiations and agreements with the imperial authorities colonizing North America. Agreements made at that time were set out in treaties and in British colonial policy, particularly as stated in the Royal Proclamation of 1763. These were early expressions of this longstanding relationship.

The Crown and the First Nations

To achieve a better understanding of the origin, evolution and current state of the trust relationship, the Committee commissioned a study, *The Crown and the First Nations: Trust Relationships*, which traces the history of the trust from colonial days to the present. Indian

peoples, non-Indian governments and the courts all have different perspectives about the trust. Does the existence of a trust imply that Indian people are like children or 'wards' of the state, or does the concept refer to solemn promises between nations that must be honoured?

The research study described dealings between the Crown and First Nations in colonial times as those of partners or allies—political equals acting on the basis of consent and equality. With consolidation of colonial control, the concept of trusteeship was added to the principle of consent. In the Royal Proclamation, the notion of "protection of Indian nations" appears:

> The Royal Proclamation recognizes the existence of a special relationship between the Indian Nations and the Crown. It is an alliance or a relationship of interdependence, not one of dependence. Yet, the partners do not stand on an equal footing. Great Britain, though recognizing the various Indian Tribes as allies, also assumes certain responsibilities. She affirms that the Indians living in parts of her Dominions and Territories are under her protection. She confirms that this is "just and reasonable." She establishes a relationship somewhat akin to a suzerainty, a relationship of a nation, living within the boundaries and under the protection of a larger nation. Though recognizing the Indian Tribes as nations, the Proclamation also contains elements which describe a trust relationship. . . .
>
> The essence of the policy behind the Proclamation, as indicated, is two-fold. On the one hand it centralizes authority over Indian Affairs with the Crown in Right of England. Second, it formalizes the Crown's intent to strengthen its alliances with the various Indian Nations. In so doing, the Proclamation denies the right of the Colonies to issue land grants outside their boundaries, and establishes the approximate boundaries of Indian country.
>
> . . .it outlines certain policy guidelines which subsequently become the basic principles of Indian-Crown relations. In so doing, the Proclamation recognizes aboriginal rights, and the duty to protect such rights. The rights are recognized in order to secure an alliance with the various Indian Nations. The duties of the Crown are admitted because these nations live under the protection of the Crown. In identifying this special relationship, the Proclamation uses trust language, reserving vast tracts of land for the use and benefit of the Indians. (Trust Study, pp. 87,92)

The report went on to describe the progression of the special relationship in the following terms:

> The Crown assumed a special responsibility for the protection and management of Indian proprietary interests;
>
> Control over the administration and alienation of Indian lands and Indian property rested with the Crown;
>
> Indian property in the hands of the Crown was held for the use or benefit of Indians; and
>
> The Crown in exercising control over Indian property was a guardian or trustee of the Indian interest. (Trust Study, p. 172)

As colonial governments within Canada grew strong, they began to extend jurisdiction unilaterally and take Indian lands, often without consent. This is reflected in legislation and judicial decisions beginning in 1850 and continuing well into the twentieth century. In this period the federal government's failure to honour trust obligations undermined the position of Indians in Canada. Instead of protecting Indian property from the encroachment of oth-

ers, and despite legal procedures designed for this purpose, the government permitted a steady erosion of the Indian Nations' land base. Bands did not receive a proper return when their land was sold; on occasion, they received nothing. Instead of preserving hunting and fishing rights, the federal government permitted these rights to be limited by legislation and allowed or encouraged development of lands in ways that made it impossible for Indian people to pursue their traditional ways of living. Indians were not compensated for the resulting loss of livelihood. Many tragic examples of the federal government's failure to protect Indian interests were cited before the Committee.

Although Canada has now entered an era of re-evaluation, in which the worst abuses of the past have come to be rejected, both Indian peoples and non-Indians continue to live with a "legacy of betrayal and bitterness", to quote one of the witnesses before the Committee. (Sub 10:30) The people of many First Nations live in poverty, their land and resource base eroded. The trust accounts were intended to provide part of the economic base for Indian First Nations. Today, most are sadly inadequate for that purpose.

The legal aspects of the situation remain ambiguous at best. Recent attempts by Indian people to obtain redress in the courts have failed, though the legal questions are not fully settled. Recently, the federal government argued that it would not compensate the Musqueam Band for losses arising from the rental of band land at well below market value. The government asserted that it had no legal duty—it was subject only to a "higher", but unenforceable, "political trust".

For all these reasons, the Committee has called throughout this report for a new approach to the special relationship. The Committee has proposed that there be an affirmation of the federal government's support for First Nations' authority over their lands and of their right to survive and develop within the Canadian federation. A renewed relationship could be possible, given recognition of self-government and guarantees of assured funding. The federal government's primary responsibility would be to promote self-government in a manner that respects the rights and interests of Indian First Nations.

Old, distorted, paternalistic notions about the 'protection' of Indian people and nations must be discarded. The elements of the new relationship would be as follows:

- recognition of Indian First Nation governments, with powers and jurisdiction appropriate to a distinct order of government within the Canadian federation;
- fiscal arrangements suited to self-governing entities;
- a secure economic base, including land, water and resource rights, which, together with educational and community services appropriate to modern society, would strengthen the culture and economy of First Nations;
- equitable settlement of claims to restore capital trust accounts, resources and lands to the First Nations; and
- legally enforceable agreements between the federal government and First Nations to implement the new arrangements.

Together, these elements constitute the Committee's central proposal—a proposal by which the federal government could "brighten the covenant chain", a phrase the Haudenosaunee

used as a symbol of the process of renewing government-to-government relationships. (Special 31A:7-8)

49. The Committee asserts that the special relationship between the federal government and Indian First Nations must be renewed and enhanced by recognizing the right of First Nations to self-government and providing the resources to make this goal realizable. This will require that the duties and responsibilities of the federal government to Indian First Nations be defined in the Constitution and in legislation and that they be legally enforceable.

An analogy can be drawn with the situation of trusteeship under international law. The Canadian Indian Lawyers' Association cited the United Nations *Charter on Non Self-Governing and Trust Territories*, Chapter XI, Article 73, which reads as follows:

> Members of the U.N. which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount and accept, as a sacred trust, the obligation to promote to the utmost... the well-being of the inhabitants of these territories and to this end; (a) to ensure, with due respect for the culture of the people concerned, political, social and educational advancement, just treatment and protection against abuse; and (b) to develop self-government, to take due account of the political aspirations of the people and to assist them in the progressive development of their free political institutions according to the particular circumstances of each territory, its peoples and their various stages of advancement.

Although the First Nations have a political relationship with Canada different from that of the U.N. trust territories, the federal government has the same obligations as those listed above.

Advocacy of Interests and Protection of Rights

Witnesses before the Committee called for the federal government to take a new view of its role in relation to Indian First Nation rights. It has a responsibility, based on section 91(24) of the *Constitution Act, 1867*, to further the interests of Indian First Nations:

> It is incumbent on the federal government that, even when it is contrary to other aspects of its interests to do so, it should uphold the interests of its wards. In this case, the preservation of our aboriginal rights, the promises of treaty, the dictates of a colonial policy... have paramountcy over other federal government obligations and duties. (McLeod Lake Band, Special 20:44)

While rejecting the view that Indian nations or peoples are 'wards', the Committee agrees that the federal government has an obligation to act in the best interests of First Nations, as those interests are perceived by Indians themselves. Aboriginal and treaty rights are constitutionally entrenched and must be protected. When disputes arise, such as prosecutions under provincial laws governing hunting or fishing, or requests are received for help for a First Nation whose treaty lands are being flooded or used in other ways incompatible with Indian rights, the federal responsibility should be two-fold. The federal government should first ensure that Indian people are able to present their own arguments in defence of their interests. This subject is addressed later in this chapter. Secondly, the federal government should be prepared to intervene on the side of Indian interests against competing claims,

when called upon to do so. Advocacy of Indian rights and interests rests primarily with the First Nations, but federal support should be available to reinforce the Indian view.

Ideally, the Minister of State for Indian First Nations Relations would be the person responsible for the quality of the relationship between the First Nations and other orders of government. The Minister of State should act on behalf of the federal government to honour agreements, to make efforts to promote the well-being of the First Nations, and to defend their interests against encroachment by other governments or interests.

Despite these efforts, some situations will probably lead to conflicts between the interests of the First Nations and federal government policies on other matters. Even in this instance, where the actions of another arm of the federal government diverge from the rights of First Nations, there should be continuing support for Indian First Nations. The Minister of State should be assigned the duty to protect First Nations' interests and should have the authority to perform the duty without regard to other governmental interests. Precedents for this exist; it is the traditional duty of the Attorney General to protect the public interest and to discharge this duty with complete independence, regardless of conflicting governmental or political pressures.

Where a special duty or trust responsibility exists, it is not enough merely to balance competing interests. In the case of *Pyramid Lake Paiute Tribe* v. *Morton*, the United States District Court considered the actions of the Secretary of the Interior in relation to the allocation of scarce water between an irrigation scheme and a desert lake owned by the Pyramid Lake Paiute. The court held that a 'judgement call' dividing the water resource between the competing interests was a breach of the government's fiduciary obligation to the Indians. The compromise or saw-off approach effectively denied the special fiduciary character of the government's responsibility.

50. The Committee recommends that the responsibilities of the Minister of State for Indian First Nations Relations include the duty to promote the interests of First Nations. Where there are competing interests, it should be the specific duty of the Minister to protect the rights of Indian First Nations against encroachment by other governments or interests.

In view of the history of relations between the federal government and Indian First Nations, a monitoring agency may also be needed. This office or commission should be separate from the Ministry of State and independent of all government departments. Its role would be to ensure that the federal government was carrying out its responsibilities toward Indian First Nations. The commissioner should report to Parliament.

One important function of this commission could be to assist First Nations in dealing with bureaucracy. In order to do so it should be empowered to investigate and report on complaints by Indian people about government actions. It could also have a general oversight function, ensuring that government actions do not impinge on aboriginal or treaty rights or other rights of First Nations, whether they are constitutional, statutory or established by intergovernmental agreement. The office would be analogous to that of an ombudsman:

> The legislative ombudsman is one who is accountable to the legislature, appointed on a non-partisan basis for a definite, long term, removable only by the legislature and whose

jurisdiction extends to all administrative authorities, and to the highest officials operating under the jurisdiction of legislation duly enacted.*

An ombudsman generally has no enforcement powers:

> ...The classic ombudsman is (1) legally established, (2) functionally autonomous, (3) external to the administration, (4) operationally independent of both the legislature and the executive, (5) specialist, (6) expert, (7) non-partisan, (8) normatively universalistic, (9) client-centered but not anti-administration, and (10) both popularly accessible and visible. The institution's mission is to generate complaints against government administration, to use its extensive powers of investigation in performing a post-decision administrative audit, to form judgments that criticize or vindicate administrators and to report publicly its findings and recommendations but not to change administrative decisions. Indeed, one of the institution's most interesting puzzles is its apparent effectiveness despite minimal coercive capabilities.**

If enforcement or the power to take legal action were added to these functions as some witnesses suggested, a different model might be needed. The structure of the commission, the manner in which it would monitor the special relationship, and its powers to deal with problems arising from governmental actions should be developed through discussions between the federal government and representatives of Indian First Nations.

51. The Committee supports the principle of establishing an independent officer to monitor and report to Parliament on official actions affecting Indian First Nations. The structure and powers of this office should be decided through negotiations between the federal government and designated representatives of Indian First Nations.

Many witnesses called for the creation of an agency to promote and protect Indian First Nation rights. They drew attention to the concept mentioned in the Declaration of First Nations, a Treaty and Aboriginal Rights Protection Office:

> We support the establishment of a Treaty and Aboriginal Rights Protection Office to ensure that Canada's responsibility to Indians is paramount in assessing any activities undertaken or approved by other levels of government in Canada.
>
> Parliament must take steps to ensure that Canada's responsibility to Indians takes precedence over any other activity of Canada or the provinces, and the Treaty and Aboriginal Rights Protection Office must be empowered to see that these responsibilites are met. (Dakota Nations, Special 12:121)

The Special Committee of the Northwest Territories Legislative Assembly on Constitutional Development recommended that "a mechanism to protect aboriginal rights be established and included in the institutions of government, once aboriginal rights settlements are concluded." (Special 28:13) The Honourable George Braden, leader of the elected executive government of the Northwest Territories, told the Committee that a protection office is especially relevant in light of the identification and definition of aboriginal rights in the ongoing constitutional process and that this was an area requiring further study. (Special 28:18)

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* Donald C. Rowat, *The Ombudsman Plan: Essays on the Worldwide Spread of an Idea* (Toronto: McClelland and Stewart Ltd., 1973), p. 25.

** Larry B. Hill, *The Model Ombudsman: Institutionalizing New Zealand's Democratic Experiment* (Princeton, N.J.: Princeton University Press, 1976), p. 12.

The Federation of Saskatchewan Indian Nations noted:

> In the past, most of the intended legislative and administrative protections for Indian nations have proven impotent in their treatment of land claims, entitlements, resource development and redress, property and territorial jurisdiction, treaty enforcement and Crown trusteeship of these rights. Because of these problems, an institution must be established to protect Indian rights against further attrition. . . (Special 11:18)

The supporters of the concept had many different views about the functions of such an office. For some, investigation of complaints concerning violations of Indian First Nation rights was important. The independent officer recommended earlier in this chapter would exercise such investigative powers.

Advocacy of Indian First Nations' rights is an important goal to be promoted. Effective representation of First Nations' interests, particularly in aboriginal and treaty rights cases and other litigation relating to Indian lands and resources, would be significant in ensuring respect for First Nations' rights within the Canadian legal system. An organization providing legal assistance to First Nations would help to develop a new body of legal precedents. With funding at a level comparable to that available to opposing interests in litigation, it could help to bring equity to the legal process. The Native American Rights Fund in the United States is an example of a non-governmental organization fulfilling the function; its work has contributed significantly to recent legal developments in the United States. An advocacy office under Indian auspices would enable First Nations to defend their rights and interests. It should be independent of the federal government, except for the provision of funding.

52. The Committee recommends that the federal government make available funds for an advocacy office to be established under Indian auspices. Funds would be provided to enable the office to represent Indian First Nations' interests in legal disputes affecting their rights.

The Trust Accounts

The "Indian moneys" or trust accounts held by the Department of Indian Affairs and Northern Development for the "use and benefit" of bands are a small but significant manifestation of the trust relationship. Trust accounts were originally established to provide a continuing economic base for First Nations. When any part of the lands reserved for a band was surrendered and sold, or when resources on reserve lands were sold, the proceeds were to be held in these accounts to finance present and future activities of the band.*

Until recently, these proceeds from the sale of lands were the main source of funds to each band's capital account. In the last ten years, as a result of oil and gas royalties flowing into the capital accounts of a few bands, the overall trust fund balances have climbed dramatically.

Band trust funds are now held and accounted for by the Department of Indian Affairs and Northern Development under two headings: capital trust accounts and revenue trust

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* The following discussion is drawn from pp. 12-71 of the Trust Study.

accounts. In addition to band accounts, the Department also holds individual accounts for minors, unsettled estates, mentally incompetent persons, guardianship cases and missing heirs. Most minors' trust funds originate from per capita distributions from the capital accounts of the bands.

The administration of trust funds is governed by the *Indian Act* and the *Financial Administration Act*. Under Section 69 of the *Indian Act*, which provides the main guidelines for distribution of band revenue trust funds, an Indian band can "control, manage and expend in whole or in part its revenue moneys"; 75 per cent of Indian bands have been authorized to manage their revenue moneys.

These trust funds constitute a liability of the government of Canada and are held in the Consolidated Revenue Fund. Essentially, the Department acts as a bank or trust company, paying interest at a rate based on the average yield of twenty Government of Canada bond issues. As of March 31, 1980 there was $236 million in the capital accounts and $31 million in the revenue accounts. Growth in a few accounts has been quite rapid and, by the spring of 1983, the trust fund liability was over $365 million. Statistics on the individual trust accounts are more difficult to obtain. As of March 31, 1981, there were 1,041 estate accounts, with a total fund balance of $1,371,136, and 8,917 savings accounts with a total fund balance of $9,543,958.

The research consultants engaged by the Committee determined that the total for both capital and revenue accounts was about $366 million as of March 1983. The overwhelming majority ($326 million) accrued to bands in Alberta. British Columbia bands had close to $22 million held in trust on their behalf, with the remaining $18 million distributed among Indian bands in the other eight provinces.

The great bulk of band trust funds accrue to the benefit of a very few bands. Four Alberta bands with a total membership of just over 8,000 people have trust funds that together total over $260 million, or $32,000 per capita, and constitute over 70 per cent of the total Indian trust account balances. At the other extreme, 121 bands, with an average population of nearly 500 per band, have less than $4,000 each in their trust accounts, or $8 per capita. The median band is in the $16,000 to $32,000 range; their trust accounts contain an average of $45 per band member.

In their origin, trust funds were intended to provide an economic base. It is clear that trust funds represent a significant financial interest for only a very small portion of the Indian population. This situation led the Committee's consultants to conclude that:

> The distribution of trust assets, as they now stand, would not be an adequate financial base for self-government . . . the settlement of claims and the better assessment of opening balances might well change the ability of different bands to sustain their own budgets. (Trust Study, p. 62)

The consultants were asked to comment particularly on why the Auditor General had reported in 1980 that he had been unable to audit the trust funds. They reported as follows:

> It is their submission that the basic reason why the Auditor General has been unable to audit the trust funds goes beyond the lack of records, the high cost of doing such an audit, and the lack of staff available to do the work. They submit that the fundamental question at issue is beyond the competence of auditors as such. That question is the determination

> of the opening balance in each trust account, and an evaluation of the fair market value of each sale of land or resources leading to a deposit into a capital account. This, they feel, is a study which is necessarily done by historians and lawyers. (Trust Study, p. 13)

Such a study would be an enormous undertaking. Although the British government began keeping track of Indian land and trust fund transactions in the early nineteenth century, early records are incomplete and difficult to decipher. Methods of accounting have changed over the years and cannot easily be compared to modern standards and systems. There have been some studies of the transactions behind the trust accounts:

> . . . the history of the Land Management Fund by Pacey. . . provides a century-long historical account behind the opening balances of the present book-keeping. It documents innumerable frauds and abuses; excessive commissions; disbursements for purposes which do not appear to relate properly to the purpose of the trust; sales with parties who were clearly involved in gross conflicts of interest; and every other form of impropriety available to an irresponsible trustee. The opening balances with which this following study deals are the amounts left over after this sort of mismanagement. (Trust Study, p.15)

The insignificant amount now in most trust accounts strengthens the Committee's conclusion that high priority should be given to the equitable settlement of any claims. Settlements would be a major contribution to the capital base of Indian First Nations and would promote self-sufficiency. The following discussion and recommendations, concerning future management and the role of trustees in relation to capital and revenue accounts, must accordingly be understood as being without prejudice to the assessment of the balances and settlement of other claims.

The Department of Indian Affairs and Northern Development has responsibility for both program delivery and trust fund activity. These two functions give the Department a dual objective and raise an unresolved question: who is the client? Is the Department of Indian Affairs and Northern Development accountable to Parliament for public funds or accountable to Indian people as a trust fund manager?

An official from the Auditor General's office, commenting on the trust funds, noted that "departmental managers did not have a common interpretation of what the Department's role was" and elaborated as follows:

> One of the basic principles of accountability is that the objectives of an organization be clearly stated. In the case of the Department of Indian Affairs and Northern Development, there was a confusion in the mandate of the Department. Specifically, should the funds be used by the Department to seek economic and social gains for Indian people or should the Department simply distribute these funds equitably to native people as they pursue their own objectives? There is a very major difference between these two orientations, and we believe that has to be clarified before you can establish a structure for accountability. (House of Commons, Standing Committee on Public Accounts 27:10, March 24, 1981)

Originally, revenue from capital accounts was used by the Department, as trustee, to pay for services provided to Indian people. Indian programs now require federal funds, and for those moneys the Deparment is accountable to Treasury Board and Parliament, according to the laws and guidelines set for all government programs.

On the other hand, trust funds must legally be disbursed according to the terms of the *Indian Act*, with the Minister acting like a 'statutory trustee'. The Act states that Indian

moneys may only be spent for the benefit of the Indians or bands for whom the funds are held. For expenditures of capital, a band council resolution is required, although the band as a whole need not consent. In all cases, however, the Minister (or, more accurately, the Cabinet) has the power to exercise discretion in the use of funds. Subject to the terms of the Act and any relevant treaties or surrenders, he may determine whether a purpose is for the "use and benefit" of the band.

Administering federally funded programs and managing trust funds are two very different roles, requiring different exercises of judgement. In recent years, the two functions have become confused, and uncertainty as to the Department's role and objectives has arisen.

Legal problems may also arise. One specific concern has been per capita distribution to band members. The departmental Management Improvement Project (Trust Fund Management) noted:

> With regard to the expenditure process, current activities concerning the expenditure of capital moneys are incompatible with the direction of the *Indian Act*. At this time, that Act does not permit the management of these funds in any manner by anyone other than the Crown. In 1981, total capital expenditures were about $200 million, while over $20 million of this was for per capita distributions to band members. Where the latter concerned distributions to minors, which could have amounted to $10 million or more for 1981 alone, the Crown is vulnerable to prosecution for breach of trust, as these moneys traditionally have been improperly paid to the parents.

The authors concluded that the Department is becoming more and more vulnerable to successful legal prosecution by bands and individual Indians on grounds of breach of trust.*

The policy of devolution to bands may also leave the Department open to suit for breach of its statutory duties. Policies conflict with statutory standards, and the laws themselves—the *Indian Act* and the *Financial Administration Act*—conflict.

For these reasons—conflicting standards and the incompatible roles of trustee and program administrator—change is needed. In any event, the Department is ill-equipped to function as a bank. The researchers thus concluded that the Department's trust fund management role should be separated from its program delivery functions. The Committee is of the view that the trust fund management role should be phased out as First Nations are recognized as self-governing. Holding the Minister responsible for managing Indian band moneys, as if Indian people were incapable of doing so themselves, is the antithesis of self-government.

The earlier discussion of the origin and purpose of the trust accounts should indicate, however, that a simple pay-out of moneys to First Nation people or governments would be inappropriate, at least in the case of the capital accounts. These accounts were accumulated for the First Nations to provide a financial base for the future, and there are still future generations to consider.

53. The Committee recommends that the revenue trust funds be transferred from the Department of Indian Affairs and Northern Development direct to each First Nation for administration by its government. Capital trust funds, however, should be transferred to a

* DIAND, *MIP 2.3* (August 1, 1982), *Executive Summary*.

trust management system designated by the First Nation concerned and consistent with the original purpose of the trust accounts—that is, the use and benefit of the people of the First Nation. Transfers should be made following recognition of a First Nation having a government accountable to and supported by its membership.

It would be the responsibility of the First Nation to arrange for and legally establish a suitable trust administration or investment plan. The trustee could be a trust company, a trust organization established by a group such as the Assembly of First Nations or other Indian organization, or an investment firm.

The Minister would then have discharged his obligations as manager of those trust moneys and would no longer be accountable to Parliament or to the First Nation in respect of their management. He would be relieved of any future responsibility for the management of the transferred funds, effective from the date of the transfer. This would not preclude a First Nation making claims against the government on the basis of mismanagement or other breach of trust up to the time of the transfer. Such matters are a proper subject for settlement through the new claims resolution process recommended by the Committee.

54. The Committee recommends that, once funds are transferred, the Minister of Indian Affairs be relieved of any future responsibility for their management, but that the transfer be made without prejudice to claims regarding the amount of the funds and the way funds were managed prior to the transfer.

CONCLUSION

CHAPTER 10

CONCLUSION

The Future of the Department

This report is based on a major sounding of the views of the Indian peoples of Canada. The Committee heard a cross-section of Indian opinion and concern from one end of the country to the other. Experts were consulted. Legal advice was obtained. The Committee members drew on their own experience and feelings.

The Committee is strongly convinced that a major change in the orientation of federal policy must occur. The federal government must establish new relationships that will enable Indian peoples to break out of the vicious circle of dependency, poverty and despair that now grips them. There is little benefit to be gained by tinkering with the *Indian Act* or adjusting the present policy of devolution.

The Committee has recommended that the federal government recognize Indian First Nation governments as a distinct order of government within the Canadian federation. It has proposed fiscal arrangements that would assure these governments of adequate funding to provide government services, correct infrastructure deficiencies, and undertake economic development. It has urged the adoption of a new claims settlement policy and a process for expediting their resolution.

To carry out these new policies, the Committee has proposed a number of new federal institutions and processes:

- To manage and co-ordinate the federal government's relations with Indian First Nations, there should be a Ministry of State for Indian First Nations Relations. The Minister should have the duty to promote the interests of Indian First Nations.

- Within the federal government, the Ministry of State should also be responsible for funding First Nation governments for services they would provide, for economic development, and for correcting deficiencies in community infrastructure.

- A new agency should be set up to carry out the proposed new claims settlement policy.

- A panel, jointly appointed by the federal government and designated representatives of Indian First Nations, should be formed to consider requests for recognition of Indian First Nation governments. Recognition would be formally confirmed by the Governor General.

- Responsibility for the trust funds should pass from the Minister of Indian Affairs to Indian First Nations. Capital funds could be managed by Indian financial institutions or private trust companies.

- A small secretariat could facilitate negotiations between the federal government and Indian First Nations.

- A special commission responsible to Parliament should monitor complaints and report annually on the state of the relationship between Indian First Nations and the federal government.

- The federal government should contribute to the support of an office to assist Indian First Nations to protect their rights and interests through effective advocacy.

- A new tribunal should be put in place to adjudicate disputes between Indian First Nation governments and other governments.

The Committee has also recommended new legislation that would put Indian First Nations in a position to control their own affairs through recognized governments. The result would be the demise of the programs relating to Indian people of the Department of Indian Affairs and Northern Development. The program delivery functions of the Department and the extensive monitoring requirements linked to them would disappear as First Nation governments exercised responsibility for these services. Indian programs of other departments would be similarly affected. Residual responsibilities of the Department would be assumed by the new Ministry of State for Indian First Nations Relations and by the various small, specialized agencies that the Committee is proposing.

55. As Indian First Nation governments exercise control over their own affairs, the Committee strongly recommends that the programs of the Department of Indian Affairs and Northern Development relating to Indian people be phased out. This process should be completed within five years. This recommendation does not affect the Department's mandate for northern development.

Parliament and the Indian Peoples

The Indian First Nation governments that the Committee has recommended be established would relate to the federal government on a government-to-government basis. Under

such a political structure, a question arises as to how Indian First Nations might relate to Parliament. A few countries provide for special representation of indigenous peoples or dependent territories in their national legislatures, so as to ensure that those peoples or territories have an acknowledged voice in the national debate.

In New Zealand, which has a parliamentary system similar to Canada's, the Maori people elect four representatives to Parliament through direct elections in which only Maoris may be candidates and only Maoris may vote. For this purpose the country has been divided arbitrarily into four constituencies. The Maori Members of Parliament participate with full rights. The system was devised in the 1860s as a temporary measure in anticipation that the Maori people would be assimilated. Maoris today constitute about 10 per cent of the population, and a few Maori representatives are usually elected by the normal electoral process as well.

The United States has a different system. There is no federal representation for Indian peoples, but some dependent territories—Guam and Puerto Rico for instance—each have the right to a delegate in Congress, although their powers are restricted in that they cannot vote in the House of Representatives. The District of Columbia is similarly represented in the House. In practice, since the congressional committee system is strong, these special members—who have the right to vote in committee—carry more weight than appearances would suggest. At the state level, Maine makes provision for the representation of Indian people in its legislature.

A few witnesses expressed support for special representation for Indian peoples in the House of Commons:

> We definitely need representation in the House of Commons. . . .They should be elected by native people across the country. . .so that the rights that. . .we acquire down the road are guaranteed. We are such a small minority in the Canadian political process today. (Central Interior Tribal Councils, Special 18:35)

Most of those who expressed opinions, however, were sceptical of the value of special representation:

> We looked at the model of guaranteed seats which was available to the Maori people. . . .That model was not successful. . . .Those guaranteed seats were then swallowed up by the rest of the voting members and they did not have any direct consent over what was to happen. (Association of Iroquois and Allied Indians, Special 16:28)

The research paper prepared for the Committee on the government of aboriginal peoples (see Appendix F) concluded that the New Zealand model has a number of problems: the Maoris are under-represented in Parliament; the elected representatives exercise little power; and the system has weakened traditional Maori governmental structures.

56. The Committee believes that the best way to promote Indian rights is through Indian self-government and not by special representation for First Nations in Parliament. Nevertheless, the situation of Indian peoples will change with self-government, and special representation in Parliament might in future offer benefits that cannot now be anticipated.

Accommodating Diversity

In preparing this report, the Committee has been cognizant of international standards. Canada is obliged to protect and promote the rights of the peoples of the Indian First Nations in a manner consistent with the rights guaranteed in the international covenants Canada has signed—the *United Nations Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights*, and the *Helsinki Final Act* of 1975. These agreements guarantee both the fundamental collective right of peoples to be self-governing and the basic human rights of individuals.

57. The Committee has concluded that the implementation of this report in its entirety, legislatively and constitutionally, is the best means of satisfying international standards in relation to Indian First Nations.

Internationally, there is an increasing awareness that the old approaches to indigenous peoples have failed. The colonial mentality is being replaced with a recognition of fundamental human rights. Other countries with indigenous populations, such as Denmark, are seeking alternatives to assimilation. In a federal state like Canada, which already accommodates so much linguistic and cultural diversity, finding an alternative to assimilation should not be difficult.

In the past the prevailing approach to indigenous peoples has been to hold up eventual self-government as a reward for adapting to the customs of the dominant society. This assumption must be turned on its head. Indigenous peoples will evolve and prosper only under self-government.

Canada now has an opportunity to develop creative mechanisms, institutional arrangements and legislation that could give the people of the Indian First Nations a productive place in Confederation. Moreover, it is in Canada's best interests to do so. Throughout history, nation-states that have accommodated diversity have been more stable and have lasted longer.

The political status of indigenous peoples has already evolved substantially during this century—from colonial dependency to a recognition of human and political rights. Canada can resist this movement or it can offer leadership. The Committee believes that the recommendations in this report would add a new dimension to Confederation and make Canada an international leader in governmental relations with indigenous peoples.

58. The Committee requests that the government respond to this report in accordance with Standing Order 69(13). Because the Special Committee will cease to exist at the end of the current parliamentary session, the Committee recommends that this response, once tabled in the House, be automatically referred to the Standing Committee on Indian Affairs and Northern Development. The referral of the government's response to the Standing Committee would allow views to be presented on both the report and the government's response. A parliamentary follow-up procedure would thus be established.

I hope that we are psychologically prepared for this challenge. It has come upon us rather suddenly and tends to shake the basis on which we have always thought about our relationship with native people. I suppose, in a way, we tend to react like somebody who has been standing on the other fellow's toes for so long that we are indignant when he wants to pull his foot out. I hope we can overcome this for his sake and ours.

—Dr. Lloyd Barber, former Commissioner of Indian Claims

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS

Note: The Committee's conclusions and recommendations are grouped by subject. They do not appear here in the same order as they appear in the text of the report, but the page number following each conclusion or recommendation indicates where it can be found in the text.

Throughout the report the Committee has used the term *Indian First Nations* to describe the entities that would be exercising self-government. Although the terms of reference refer to "Indian self-government", the majority of witnesses referred to themselves as members of First Nations. In order to familiarize the general public with the term, the Committee decided to use *Indian First Nations* in this report.

Self-Government

The Committee recommends that the federal government establish a new relationship with Indian First Nations and that an essential element of this relationship be recognition of Indian self-government. **(p. 41)**

The Committee recommends that the right of Indian peoples to self-government be explicitly stated and entrenched in the Constitution of Canada. The surest way to achieve permanent and fundamental change in the relationship between Indian peoples and the federal government is by means of a constitutional amendment. Indian First Nation governments would form a distinct order of government in Canada, with their jurisdiction defined. **(p. 44)**

While the Committee has concluded that the surest way to lasting change is through constitutional amendments, it encourages both the federal government and Indian First Nations to pursue all processes leading to the implementation of self-government, including the bilateral process. **(p. 46)**

Legislation

The Committee recommends that any changes of policy possible under existing laws that would enhance self-government and that are acceptable to designated representatives of Indian First Nations be taken without waiting for the enactment of new legislation. It must be the responsibility of First Nations themselves to select a method of designating representatives to negotiate on their behalf. **(p. 60)**

The Committee does not support amending the *Indian Act* as a route to self-government. The antiquated policy basis and structure of the *Indian Act* make it completely unacceptable as a blueprint for the future. **(p. 47)**

The Committee rejects the Department's band government proposal. Although there have been years of consultation, there was no general agreement of Indian representatives, and the proposal finally emerged from a unilateral government decision. **(p. 47)**

The Committee recommends that the federal government commit itself to constitutional entrenchment of self-government as soon as possible. In the meantime, as a demonstration of its commitment, the federal government should introduce legislation that would lead to the maximum possible degree of self-government immediately. Such legislation should be developed jointly. **(p. 50)**

The Committee recommends that the federal government and designated representatives of Indian First Nations jointly appoint and fund an independent secretariat to provide a neutral forum for conducting negotiations between them. **(p. 62)**

The Committee is convinced that any legislation that could apply generally must offer a framework flexible enough to accommodate the full range of governmental arrangements that are being sought by Indian First Nations. **(p. 48)**

The Committee recommends three legislative measures:

1. The enactment of an Indian First Nations Recognition Act committing the federal government to recognize Indian governments accountable to their people.

2. Legislation authorizing the federal government to enter into agreements with recognized Indian First Nation governments as to the jurisdiction that each government wishes to occupy.

3. Legislation under the authority of Section 91(24) of the *Constitution Act, 1867* designed to occupy all areas of competence necessary to permit Indian First Nations to govern themselves effectively and to ensure that provincial laws would not apply on Indian lands except by agreement of the Indian First Nation government.

With this legislation in place and supported by appropriate agreements, Indian First Nations could be self-governing in areas in which they wish to legislate. **(p. 59)**

The Committee recommends that a Ministry of State for Indian First Nations Relations, linked to the Privy Council Office, be established to manage and co-ordinate the federal government's relations with Indian First Nation governments. **(p. 61)**

The Committee recommends that the federal government introduce legislation to implement the Jay Treaty. **(p. 78)**

Membership

In the transition from the *Indian Act* to self-government, the Committee recommends that the starting point be the band, with its membership newly defined. The federal government should leave it to each band to decide whether its people would constitute themselves as an Indian government, or would join with others to form an Indian government of which the band would be a part. **(p. 54)**

The Committee asserts as a principle that it is the rightful jurisdiction of each Indian First Nation to determine its membership, according to its own particular criteria. The Committee recommends that each Indian First Nation adopt, as a necessary first step to forming a government, a procedure that will ensure that all people belonging to that First Nation have the opportunity of participating in the process of forming a government, without regard to the restrictions of the *Indian Act*. **(p. 55)**

Federal Responsibility

The Committee recommends that the federal government consider using a general list as a means of providing special status to people who are Indian for purposes of Indian programs, but who are not included in the membership of an Indian First Nation. **(p. 56)**

The Committee asserts that the continuing responsibilities of the federal government toward Indian people, whether or not they become members of Indian First Nations, must be recognized. The Committee urges federal, provincial and Indian First Nation governments, along with representatives of Indian people who are not members of First Nations, to work toward arrangements that respect the rights and aspirations of all Indian people. **(p. 68)**

Recognition

Eventually, Indian First Nation governments should be recognized and protected through constitutional provisions. Until this can be accomplished, the Committee recommends that the federal government introduce an Indian First Nations Recognition Act, which would confirm the federal government's willingness to recognize the maximum amount of self-government now possible under the Constitution. It would establish criteria to be met by any First Nation government wishing to be recognized as self-governing, such as:

(a) demonstrated support for the new governmental structure by a significant majority of all the people involved in a way that left no doubt as to their desires;

(b) some system of accountability by the government to the people concerned; and

(c) a membership code, and procedures for decision-making and appeals, in accordance with international covenants.

The contents of the proposed Recognition Act should be developed jointly by the federal government and designated representatives of Indian First Nations. Aside from the development of acceptable and workable legislation, the federal government should refrain from becoming directly involved in community decisions about self-government. **(p. 57)**

The Committee recommends that one-time funding be made available to Indian bands to assist them in developing their governments. The terms of such grants should be worked out by agreement with designated representatives of Indian First Nations. **(p. 62)**

The Committee suggests that a small panel be appointed jointly by the Minister of State for Indian First Nations Relations and designated representatives of Indian First Nations to review requests for recognition and consider whether they meet the agreed criteria. **(p. 61)**

The Committee recommends that the Governor General affirm and record federal recognition of Indian First Nation governments that are accountable to their people and for which significant support has been shown. **(p. 61)**

North of 60°

The Committee applauds all initiatives to design innovative government structures for the North embracing all its peoples. The Committee's recommendations focus primarily on the geographically dispersed First Nations of southern Canada, but some of the ideas presented in this report may be helpful to those working toward self-government in the North. **(p. 63)**

Scope of Powers

The Committee agrees that full legislative and policy-making powers on matters affecting Indian people, and full control over the territory and resources within the boundaries of Indian lands, should be among the powers of Indian First Nation governments. **(p. 64)**

The Committee therefore recommends that Indian First Nation governments exercise powers over a wide range of subject matters. The exact scope of jurisdiction should be decided by negotiation with designated representatives of Indian First Nations. A First Nation government should have authority to legislate in such areas as social and cultural development, including education and family relations, land and resource use, revenue-raising, economic and commercial development, and justice and law enforcement, among others. First Nation governments may also wish to make arrangements with the federal and/or provincial governments to continue existing programs or services. **(p. 64)**

The Committee recommends the establishment of a specialized tribunal to decide disputes in relation to agreements between Indian First Nations and other governments. Its structures, powers and procedures should be jointly decided by the federal government and designated representatives of Indian First Nations. **(p. 67)**

Economic Foundations

A new relationship between Indian First Nations and the federal government should ultimately result in the provision of an adequate land and resource base and the settlement of

claims. Prospects for economic development would improve if the land base were expanded, claims were settled, and the control of resources on Indian lands were transferred to Indian First Nations. These actions would help to build the foundations for economic development, but they will take considerable time to accomplish. **(p. 76)**

It is essential that Indian First Nations be able to get on with the task of economic development without delay. **(p. 76)**

The Committee considers control of a strong economic base to be essential for the effective exercise of Indian self-government. In planning for development of the economic base, the people of an Indian First Nation should be able to set goals, define strategies and then act to realize their potential. To do this they will require substantial funding. **(p. 76)**

The Committee recommends that, in determining the fiscal arrangements with Indian First Nations (discussed in Chapter 7), sufficient funds be included to enable Indian First Nations to correct any serious deficiencies in community infrastructure and to begin economic development. **(p. 76)**

If representatives of the national aboriginal organizations agree to use the $345 million Native Economic Development Fund to found a special development bank, the Committee recommends that the federal government commit the Fund as the bank's initial capitalization. **(p. 77)**

The assets now controlled by Indian governments are not sufficient to support those governments. It is the Committee's hope and expectation that claims settlements, Indian control and development of their land base, new arrangements for resource revenue-sharing and other long-term entrenched financial arrangements would in due course provide Indian First Nation governments with assured funding. In the interim, grants will be necessary and are justified. Nevertheless, the Committee does not wish to see its advocacy of transfer payments reduce the pressure for progress in settling these other matters. **(p. 97)**

Fiscal Arrangements

The Committee is entirely convinced that Indian self-government must be supported by new funding arrangements that would enable Indian First Nation governments to decide how best to meet their peoples' needs. **(p. 94)**

Self-government requires that Indian First Nation governments be free to make policies and to set their own priorities. To ensure that they exercise such powers responsibly and that the people in turn are protected against wrongful use of these powers, these governments must also be accountable to those people. **(p. 95)**

The Committee recommends that future federal payments to Indian First Nation governments be in the form of direct grants. Such payments should be made to all Indian First Nation governments recognized by the federal government as being accountable to their people. **(p. 98)**

The alternative favoured by the Committee would be to fund First Nations government operations through a modified per capita formula. This would ensure equity and greatly facilitate

The contents of the proposed Recognition Act should be developed jointly by the federal government and designated representatives of Indian First Nations. Aside from the development of acceptable and workable legislation, the federal government should refrain from becoming directly involved in community decisions about self-government. **(p. 57)**

The Committee recommends that one-time funding be made available to Indian bands to assist them in developing their governments. The terms of such grants should be worked out by agreement with designated representatives of Indian First Nations. **(p. 62)**

The Committee suggests that a small panel be appointed jointly by the Minister of State for Indian First Nations Relations and designated representatives of Indian First Nations to review requests for recognition and consider whether they meet the agreed criteria. **(p. 61)**

The Committee recommends that the Governor General affirm and record federal recognition of Indian First Nation governments that are accountable to their people and for which significant support has been shown. **(p. 61)**

North of 60°

The Committee applauds all initiatives to design innovative government structures for the North embracing all its peoples. The Committee's recommendations focus primarily on the geographically dispersed First Nations of southern Canada, but some of the ideas presented in this report may be helpful to those working toward self-government in the North. **(p. 63)**

Scope of Powers

The Committee agrees that full legislative and policy-making powers on matters affecting Indian people, and full control over the territory and resources within the boundaries of Indian lands, should be among the powers of Indian First Nation governments. **(p. 64)**

The Committee therefore recommends that Indian First Nation governments exercise powers over a wide range of subject matters. The exact scope of jurisdiction should be decided by negotiation with designated representatives of Indian First Nations. A First Nation government should have authority to legislate in such areas as social and cultural development, including education and family relations, land and resource use, revenue-raising, economic and commercial development, and justice and law enforcement, among others. First Nation governments may also wish to make arrangements with the federal and/or provincial governments to continue existing programs or services. **(p. 64)**

The Committee recommends the establishment of a specialized tribunal to decide disputes in relation to agreements between Indian First Nations and other governments. Its structures, powers and procedures should be jointly decided by the federal government and designated representatives of Indian First Nations. **(p. 67)**

Economic Foundations

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The assets now controlled by Indian governments are not sufficient to support those governments. It is the Committee's hope and expectation that claims settlements, Indian control and development of their land base, new arrangements for resource revenue-sharing and other long-term entrenched financial arrangements would in due course provide Indian First Nation governments with assured funding. In the interim, grants will be necessary and are justified. Nevertheless, the Committee does not wish to see its advocacy of transfer payments reduce the pressure for progress in settling these other matters. **(p. 97)**

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The Committee recommends that future federal payments to Indian First Nation governments be in the form of direct grants. Such payments should be made to all Indian First Nation governments recognized by the federal government as being accountable to their people. **(p. 98)**

The alternative favoured by the Committee would be to fund First Nations government operations through a modified per capita formula. This would ensure equity and greatly facilitate

disbursement. It would be important to elaborate a formula that provides for adjustments, since the relative needs of communities vary. The Committee is convinced that an acceptable formula could be worked out between the federal government and Indian First Nations governments. In addition, there might be funding for exceptional needs. **(p. 100)**

The Committee recommends that the global amount of funding for First Nations government operations, for economic development, and for the correction of serious infrastructure deficiencies be determined in negotiations between the federal government and designated representatives of Indian First Nations. The Committee further recommends that Parliament be asked every five years to approve the global amount of funding by means of statute. The structures and mechanisms through which the funds for each of these three categories would be disbursed should also be settled by negotiation. **(p. 101)**

Lands and Resources

The Committee is convinced that, in order to ensure that self-government becomes a reality, each Indian First Nation must have full rights to control its own lands in the manner it sees fit. This would mean power to decide upon methods of land-holding and land management on reserves. Such areas should be recognized as Indian lands. **(pp. 108-109)**

The Committee recommends that the federal government promote the constitutional change necessary to recognize in law full Indian First Nation rights to the lands, waters and resources of all areas now classified as reserves or in future considered as Indian lands. In the interim, the Committee urges the federal government and designated representatives of Indian First Nations to agree upon the measures now possible to achieve these objectives. **(p. 109)**

The Committee recommends that there be an official Registry of Indian First Nation lands. It would hold records of land under Indian First Nation control, to be distinguished from federal and provincial lands. **(p. 109)**

Indian First Nation control of Indian lands is the first and most obvious move needed to promote self-government. Indians also call for recognition of certain rights based on treaties or aboriginal title to traditional hunting and trapping areas. **(p. 110)**

In the past, external control has meant that Indian people have not shared fully in the financial benefits of revenues arising from development of such resources as minerals, oil and gas. These revenues could have a significant effect in the development of a viable economic base, enabling Indian First Nation governments to become self-sufficient. **(p. 110)**

The Committee recommends that any reinstatement of members mandated by the federal government should include a review to determine the additional resources necessary to cover the needs of reinstated people and to recommend a mechanism to provide them. **(p. 111)**

The Committee recommends that the federal government give high priority to providing a land base for those Indian communities now without a reserve. **(p. 112)**

The Committee recommends that the federal government establish as a priority the fulfilment of land entitlements and settlements of other claims. **(p. 112)**

The Committee recommends that the main way of expanding the land and resource base of Indian Nation governments be through a just and effective land claims process. **(p. 113)**

The Resolution of Claims

The Committee is firmly convinced that there must be a new policy to promote the fair and just resolution of outstanding claims consistent with the protection of aboriginal and treaty rights in the Constitution. The federal government and designated representatives of Indian First Nations should undertake negotiations regarding a new claims settlement process to be set out in legislation. **(p. 115)**

While the details of the new policy and process should be decided through bilateral negotiations, the Committee does wish to set out certain principles that should be included. **(p. 115)**

It is imperative that the new process be shielded from political intervention. It should be set out in legislation so that it cannot be readily changed. Claims should be negotiated between the government and the claimant with a neutral party to facilitate the settlement. Where a settlement cannot be reached, there should be access to a quasi-judicial process. For Indian First Nation governments to participate effectively in claims negotiations, they must have adequate financial support. Finally, under the new policy, pre-Confederation treaties and other rights should be recognized, and claims should not be regarded as being superseded by law. **(p. 115)**

The Committee recommends that the doctrine of extinguishment be eliminated from the settlement of claims; settlement agreements should be limited to those matters specifically negotiated. **(p. 116)**

The Trust Relationship

The Committee asserts that the special relationship between the federal government and Indian First Nations must be renewed and enhanced by recognizing the right of First Nations to self-government and providing the resources to make this goal realizable. This will require that the duties and responsibilities of the federal government to Indian First Nations be defined in the Constitution and in legislation and that they be legally enforceable. **(p. 122)**

The Committee recommends that the responsibilities of the Minister of State for Indian First Nations Relations include the duty to promote the interests of First Nations. Where there are competing interests, it should be the specific duty of the Minister to protect the rights of Indian First Nations against encroachment by other governments or interests. **(p. 123)**

The Committee supports the principle of establishing an independent officer to monitor and report to Parliament on official actions affecting Indian First Nations. The structure and powers of this office should be decided through negotiations between the federal government and designated representatives of Indian First Nations. **(p. 124)**

The Committee recommends that the federal government make available funds for an advocacy office to be established under Indian auspices. Funds would be provided to enable the office to represent Indian First Nations' interests in legal disputes affecting their rights. **(p. 125)**

The Trust Accounts

The Committee recommends that the revenue trust funds be transferred from the Department of Indian Affairs and Northern Development direct to each First Nation for administration by its government. Capital trust funds, however, should be transferred to a trust management system designated by the First Nation concerned and consistent with the original purpose of the trust accounts—that is, the use and benefit of the people of the First Nation. Transfers should be made following recognition of a First Nation having a government accountable to and supported by its membership. **(p p. 128-129)**

The Committee recommends that, once funds are transferred, the Minister of Indian Affairs be relieved of any future responsibility for their management, but that the transfer be made without prejudice to claims regarding the amount of the funds and the way funds were managed prior to the transfer. **(p. 129)**

Conclusion

As Indian First Nation governments exercise control over their own affairs, the Committee strongly recommends that the programs of the Department of Indian Affairs and Northern Development relating to Indian people be phased out. This process should be completed within five years. This recommendation does not affect the Department's mandate for northern development. **(p. 134)**

The Committee believes that the best way to promote Indian rights is through Indian self-government and not by special representation for First Nations in Parliament. Nevertheless, the situation of Indian peoples will change with self-government, and special representation in Parliament might in future offer benefits that cannot now be anticipated. **(p. 135)**

The Committee has concluded that the implementation of this report in its entirety, legislatively and constitutionally, is the best means of satisfying international standards in relation to Indian First Nations. **(p. 136)**

The Committee requests that the government respond to this report in accordance with Standing Order 69(13). Because the Special Committee will cease to exist at the end of the current parliamentary session, the Committee recommends that this response, once tabled in the House, be automatically referred to the Standing Committee on Indian Affairs and Northern Development. The referral of the government's response to the Standing Committee would allow views to be presented on both the report and the government's response. A parliamentary follow-up procedure would thus be established. **(p. 136)**

APPENDIX A

WITNESSES WHO APPEARED BEFORE THE SUB-COMMITTEE AND THE SPECIAL COMMITTEE ON INDIAN SELF-GOVERNMENT

ALBERTA

Morley (November 29, 1982)

**Indian Association of Alberta*
Mr. Charles Wood, President
Mr. Sam Bull, Treaty 6 Vice-President, Indian Government Portfolio
Mr. Wallace Manyfingers, Indian Government Advisor
Ms. Sharon Venne, Legal Advisor
Chief John Snow, Wesley Band

**Wesley Band*
Elder Peter Mark Wesley

**Stoney Indian Tribe*
Chief Bill Ear, Sr., Bearspaw Band
Chief Frank Powderface, Chiniki Band
Chief John Snow, Wesley Band
Councillor John Lefthand, Eden Valley Reserve

**Blackfoot Band*
Chief Roy Little Chief
Councillor Doug Bearhat
Councillor Mildred Broad Scalplock
Councillor Russel Wright

(* Asterisk denotes those who appeared before the Sub-committee.)

Elder Jack Big Eye
Elder Mathew Melting Tallow
Councillor Percy Yellow Fly

**Sarcee Nation*
Chief Clifford Big Plume
Peter Manywounds Jr., Consultant
Fred Eagletail, Band Councillor

**Peigan Band*
Councillor Wilf McDougall
Chief Nelson Small Legs
Mr. Albert Yellow Horn Sr., Researcher
Councillor Percy Smith

**Blood Tribe*
Councillor Annie Cotton
Chief Roy Fox
Councillor Chief Keith Moon
Councillor Wayne Wells

Edmonton (November 30 and December 1, 1982)

**Alberta Native Women's Association*
Mrs. Ruth Gladue, President

**Hobbema Four Bands*
Chief Leo Cattleman, Montana Band
Mr. Wilton Littlechild, Legal Counsel

**Tribal Chiefs of Northeastern Alberta*
Chief Gordon Gadwa, Chairman, Kehewin Tribe No. 123
Chief Marcel Piche, Cold Lake Tribe No. 149, No. 149A, No. 149B

**Alberta Council of Treaty Women*
Mrs. Annie Cotton, Blood Band
Mrs. Helen Gladue, Executive Secretary
Mrs. Veronica Morin, Enoch Band
Mrs. Roslyn Manywounds, Sarcee Band
Mrs. Lucy Cotton, Blood Band

**Indian Association of Alberta*
Mr. Charles Wood, President

**Fort McKay Indian Band*
Councillor Jim Boucher

**Yellowhead Tribal Council*
Mr. Richard Arcand, Executive Director
Chief Howard Mustus
Councillor Thomas Potts

**Fort McMurray Band*

Mr. George Haineault

**Métis Association of Alberta*

Mr. Clifford Gladue, Chairman of the Constitution Committee

Slave Lake (December 2, 1982)

**Chiefs and Councils of Treaty 8*

Mr. Clifford Freeman, Vice-President

Chief Walter Twinn, Chief of Sawridge Band and President of the Lesser Slave Lake Regional Council

Mr. David Fennel, Legal Counsel

Professor David Jones, Legal Counsel

Chief Harry Chonkolay, Dene Tha Band

Mr. Simon Waquan, Interpreter, Fort Chipewyan Cree Band

Chief Lawrence Courtoreille, Fort Chipewyan Cree Band

Chief William J. Beaver

Councillor Leonard G. Alook

Mr. Adrian Yellowknee, Band Education Authority, Big Stone Cree Band

Chief Bernard Ominayak

Mr. Fred Lennarson, Advisor, Lubicon Band

**Indian Association of Alberta*

Mr. Charles Wood, President

Mr. Sykes Powderface, Parliamentary Liaison

BRITISH COLUMBIA

Nanoose (February 14, 1983)

First Nations of South Island Tribal Council

Elder Abel Joe

Chief Thomas Sampson, Tsartlip Band, Chairperson

Chief Wilson Bob, Nanoose Band

Chief Mark Recalma, Qualicum Band

Chief Dennis Alphonse, Cowichan Band

Mr. Gus Underwood, Economic Development Advisor

Councillor Philomena Alphonse, Cowichan Indian Education

Mr. Phillip Paul, Saanich School Board Administrator

Chief Andy Thomas, Esquimalt Band

Nuu-Chah-Nulth Tribal Council

Mr. George Watts, Chairman

Chief Simon Lucas, Heshkwiatt Tribe

Chief Mike Maquinna, Muachat Tribe

Chief Sarah Cootes, Huchakthisat Tribe

Chief Hugh Watts, Hupachesaht Tribe
Chief Art Peters, Hoayat Tribe
Chief Dan David, Kayukwat Tribe
Chief Charlie Thompson, Niitiinat Tribe
Bernice Touchie, Yulthuilthat Tribe
Chief Bert Mack, Tukwaat Tribe
Mr. Francis Smith, Iihatisat Tribe
Chief Archie Frank, Ahoust Tribe

Kwakiutl Tribal Council
Mr. Basil Ambers, Chairman of the Executive
Chief David J. Hunt, Kwakiutl Band
Mr. Wedlide Speck, Special Assistant
Chief John Smith, Turner Island Band

Vancouver (February 15 and April 11, 1983)

Union of British Columbia Indian Chiefs
Chief Bob Manuel
Chief Gerald Etienne
Chief Saul Terry

Musqueam Indian Band
Chief Ernie Campbell
Mr. Jim Reynolds, Lawyer
Mr. Marvin Storrow, Lawyer
Mr. Andrew Charles, Band Member

Sto:Lo Nation
Chief Clarence Pennier, Scowlitz Band, Representative to the Confederacy of Nations
Chief Mark Point, Skowkale Band, Vice-Chairman of the Executive Committee
Chief Ron John, Chawathil Band, Member of the Executive Committee

Bella Coola District Council
Mr. Archie Pootlass, Chairman
Chief Lawrence Pootlass, Hereditary Chief
Chief Edward Moody, Nuxalk Band

Sechelt Indian Band Council
Chief Calvin Craigan
Mr. Graham Allen, Band Legal Advisor
Mr. Gilbert Joe, Chairman of Indian Local Government Committee
Councillor Stanley Earl Joe
Councillor Benedict Pierre
Mr. Gordon Anderson, Band Financial Advisor
Councillor Anne Quinn

United Native Nations
Mr. Bob Warren, President

Squamish Band

Chief Joe Mathias

Mr. Harry Slad, Legal Counsel

Indian Homemakers of British Columbia

Mrs. Rose Charlie, President

Mrs. Helen Jones

Mr. Tom Morris

Mr. John Sparrow

Mrs. Bernice Robson

Mrs. Rose James

Mr. Jack Patrick

The Alliance

Mr. Andrew Charles

Mount Currie Band

Chief Leonard Andrew

Mr. John Williams

Mrs. Mary Louise Williams

Mr. Albert Nelson

West Bank Mobile Park Owners' Associations

Mr. Leonard Crosby

Prince Rupert (February 16 and 17, 1983)

North Coast Tribal Council

Mr. Johnson Gordon, Senator

Mr. Francis Lewis, President

Mr. Frank Parnell, Manager

Nishga Tribal Council

Mr. James Gosnell, President

Reverend Herbert McMillan, Elder, New Aiytansh

Reverend Percy Tait, Translator, New Aiyansh

Chief Councillor Alvin A. McKay, Lakalsap

Bishop John Hannen

Chief Councillor Rod Robinson, Vice-President, New Aiyansh

Mr. Stuart Leggatt, Legal Counsel

Mr. Bruce E. Cottingham, Advisor

Reverend Hubert Stevens, Vice-President and Chief Councillor of Kincolith

Kitamaat Village Council

Chief Councillor Gerald Amos

Chief Tom Robinson, Deputy and Hereditary Chief

Councillor Reg Smith

Councillor Morris Amos

Kitsumkalum Band

Chief Cliff Bolton

Kermode Friendship Society

Ms. Viola Thomas, Executive Director

Ms. Janice Robinson, Board of Director

Gitksan-Carrier Tribal Council

Mr. Neil Sterritt, President

Mr. Ken Muldde, Treasurer

Council of the Haida Nation

Grand Chief Percy Williams

Mr. Ernie Collison, Board Member

Massett Band Council

Councillor Frank Collison

Ms. Andrea Dickson, Band Manager

Skidegate Band Council

Mr. Miles Richardson Jr., Band Manager

Kamloops (April 12 and 13, 1983)

Central Interior Tribal Councils

Chief Mary Leonard, Kamloops Indian Band

Mr. John Jules, Kamloops Indian Band

Chief Ron Ignace, Deadmans Creek Indian Band

Chief Robert Manuel, Shuswap Nation Tribal Council

Mr. Don Moses, Chairman

Chief Gordon Antoine, Coldwater Indian Government

Chief Paul Sam, Kootenay Indian Area Council

Shuswap Nation Tribal Council

Chief Wayne Christian, Spallumcheen Indien Government

Chief Gerald Etienne, Bonaparte Indian Government

Chief Ron Ignace, Skeetchestn Indian Government

Chief Arthur Dick, Alkali Lake Indian Government

Chief Robert Manuel, Neskainlith Indian Government

Chief Mary Leonard, Kamloops Indian Government

Chief Paul Sam, Shuswap Indian Government

Chief Roy Christopher, Canim Lake Indian Government

Mr. Eddy Celesta, North Thompson Indian Government

Mrs. Evelyn Sargeant, Canal Creek Band

Mr. Robert Simon, Director

Neskainlith Indian Government

Mr. George Manuel, Spokesman

Mrs. Amy August, Elder Member

Chief Robert Manuel

Kamloops Indian Band

Chief Mary Leonard

Councillor Clarence T. Jules

Councillor John T. Jules

Westbank Indian Band
Chief Ronald M. Derrickson

British Columbia Native Women's Society
Mrs. Mildred Gottfriedson, President
Mrs. Muriel Sasakamoose, Executive Director

Pavilion Indian Band
Chief Marvin Bob
Councillor Fred Alec
Councillor Desmond Peters
Councillor Sharon Edwards

Fountain Indian Band
Chief Roger Adolph
Elder Sam Mitchell
Elder Victor Adolph
Elder Louis Williams Bob

United Native Nations—Zone 8
Mrs. Bertha Phelon
Mr. Tom Anaquod

Laichkwiltach State
Mr. George Quocksister, Head of State
Mr. Kwag-Kwag-Wa-La-Glese Cla-Qua-Sum Kwasistala, Emissary
Ms. Candy-Lea Chickite, Secretary

Kamloops Petition Group
Mrs. Mildred Gottfriedson, Kamloops Indian Band Member
Mrs. Fay Jules, Kamloops Indian Band Member
Mr. Ernie Thomas, Kamloops Indian Band Member

Kootenay Indian Area Council
Chief Sophie Pierre, St. Mary's Band, Co-ordinator

Prince George (April 14, 1983)

Carrier-Sekani Tribal Council
Elder Andrew Louie, Stellaquo Band
Mr. Edward John, Legal Advisor
Mr. Justa Monk, President
Chief Donimic Frederick, Fort George Band
Elder Celena John, Stuart-Trembleur Band
Elder Theresa Frederick, Fort George Band
Mr. Joseph Michell, Managing Director
Chief Ray Izony, Ingenika Band
Councillor Albert Poole, Ingenika Band
Councillor Gordon Pierre, Ingenika Band

Mr. Archie Patrick, Executive Director
Elder Leonard Thomas, Bans Manager, Necoslie Band

McLeod Lake Indian Band
Chief Harry Chingy
Councillor Les Chingy
Ms. Deborah Hoggan
Ms. Louise Mandell, Legal Advisor

Fort Babine Band
Chief Garnet Williams, Chairman of the Fort Babine Separation Committee
Councillor John Madam
Mr. Pat Mitchell, Manager, Fort Babine Native Fisheries Project
Councillor Aggie Michell, Chairman of Fort Babine Education Committee
Mr. James Sayre, Legal Advisor
Mrs. Ellen Stanley, Member of Fort Babine Education Committee

Cariboo Tribal Council
Chief Alice Aby, Williams Lake Indian Band, Shuswap Indian Government
Chief Gabriel Rly Christopher, Ganimn Lake Band, Shuswap Indian Government
Chief Denis Patrick, Nazko Band, Southern Carrier Nation
Chief Doreen Sellars, Soda Creek Band, Shuswap Indian Government
Chief Frank Boucher, Jr., Quesnel Band, Southern Carrier Nation
Chief Evelyn Sargent, Canoe Creek Band, Shuswap Indian Government
Ms. Charlene Billeau, Shuswap Nation

Deni Chiefs of the Chilcotin and the Southern Carrier
Chief Ray Hance
Chief David Quilt
Ms. Louise Mandell, Legal Advisor
Chief Cassidy Sill

Quesnel Community Law Center
Mr. A. Brendan Kennedy

Fort St. John (April 15, 1983)

Kaska Dena Tribal Council
Mr. Peter Stone, Chairman
Mr. George Miller, Vice-Chairman
Mr. Charlie Pete, President, United Native Nations Local 143

City of Fort St. John
Mayor Brian Palmer

Treaty 8 Tribal Council
Mr. Bud Napoleon, President
Councillor Clarence Apsassin, Blueberry Band
Councillor Amy Gauthier, East Moberly Lake Band
Chief George Behn, Fort Nelson Indian Band

Fort Nelson Indian Band
Chief George Behn
Councillor Carol Dickie
Mr. Angus Dickie, Band Member
Mr. Bob Hall, Band Manager

MANITOBA

Long Plain (January 18, 1983)

Southeast Resource Development Council
Chief Jim Bear, Chairman of the SERDC Board of Directors

Dakota Ojibway Tribal Council
Chief Ernie Daniels
Mr. Rufus Prince, Band Member
Chief Allan Pratt
Mr. Don Graveson, Director, Economic Development
Mr. Gerald Kubb, Superintendant, Education

Manitoba Indian Agricultural Program Inc.
Mr. Edward Anderson, Executive Director
Mr. Bob Green, Program Manager

Association of Tribal Councils of Manitoba
Chief Ernie Daniels
Mr. Alfred Everett

Winnipeg (January 19, 1983)

Manitoba Indian Education Association
Mr. Bill Thomas, Chairman of the Board

Indian Women's Council of Manitoba
Ms. Maria Flett, President
Ms. Lynda Neckoway, Co-ordinator North Region
Ms. Donna Fontaine, Co-ordinator South Region
Mr. Ken Young, Legal Advisor

Joint-Council of Chiefs and the All-Chiefs' Budget Committee of the Assembly of Manitoba Chiefs
Chief Ernie Daniels, Vice-Chief, Prairie Region, Assembly of First Nations
Chief Charlie Constant, Pas Band
Chief Harvey Nepinak, Waterhen Band
Chief Joe Guy Wood, Ste. Theresa Point Band
Chief Jim Bear, Brokenhead Band
Mr. Ovide Mercredi, Legal Counsel
Mr. Joy Kaufman, Policy Consultant
Mr. Murray Sinclair, Legal Counsel

Brotherhood of Indian Nations

Mr. Larry Amos, Tribal Administrator
Chief Raymond Swan, Lake Manitoba Band
Chief Edward Anderson, Fairford Band
Chief Louis J. Stevenson, Pequis Band
Mr. Robert Daniels, Co-ordinator, Anichinaabe Child and Family Services
Mr. Carol Hurd, Senior Legal Advisor

Greater Winnipeg Indian Council

Mr. Roy Cantin, Acting Headman
Mr. Conrad Spence, Advisor
Ms. Joyce Spence, Advisor, Winnipeg Indian Child Care Services
Ms. Jean Courchene, President, Urban Indian Womens' Association
Mr. Melvin Fontaine, Off-Reserve Indian

NEW BRUNSWICK

Fredericton (April 25 and 26, 1983)

New Brunswick Association of Métis and Non-Status Indians

Mr. Gary Gould, President
Mrs. Madeleine Hallett, Board Member
Mrs. Cinthya Gaffney, Board Member

New Brunswick Native Indian Women's Association

Ms. Alice Horsenell, Councillor
Ms. Barbara Martin, Executive Member to Council
Mrs. Alma Brooks, Executive Member to Council

Tobique Women

Ms. Eva Saulis
Mavis Goeres
Ms. Glenna Perley
Ms. Caroline Ennis

Union of New Brunswick Indians

Mr. Graydon Nicholas, President
Chief Harold Sappier, St. Mary's Band
Mr. Charles Paul, Employment Advisor
Mr. Donald Ward, Buctouche Band
Mr. Charlie Sark, Lennox Island Band

Tobique Indian Band

Chief George Francis
Mr. Stewart Paul

Kingsclear Band

Chief Steve Sacobie

Pabineau Band

Chief Gilbert Sewell

Eel Ground Indian Band

Chief Roger Augustine

NORTHWEST TERRITORIES

Yellowknife (May 11 and 12, 1983)

Government of the Northwest Territories

The Honourable George Braden, Leader of the Elected Executive, Minister of Justice and Public Services

The Honourable James J. Wah-Shee, Minister for Aboriginal Rights and Constitutional Development

Mr. Brian Smith, Legal Counsel, Department of Justice and Public Services

Dene Nation

Mr. George Erasmus, President

MacKenzie Delta Dene Regional Council

Mr. James Ross, Vice-President

Miss Jennifer Mauro, Co-ordinator, Resource Impact Study

Fort Good Hope Community Council

Councillor Edward Grandjambe

Councillor John Shae

Metis Association of the Northwest Territories

Mr. Bob Stevenson, President

Ms. Anne Crawford, Legal Counsel

NOVA SCOTIA

Sydney (April 27 and 28, 1983)

Shubenacadie Band

Chief John Knockwood

Elder Noel R. Denny

Millbrook Band

Chief Stanley Johnson

Eskasoni Band

Mr. Albert Marshall

Mr. Wilfred Basque

Mr. Charles Francis

Membertou Band

Mr. Kevin Christmas

Native Council of Nova Scotia
Mrs. Viola M. Robinson, President

Union of Scotia Indians
Mr. Noel Doucette, President
Mrs. Elizabeth Paul, Health Liaison Worker

ONTARIO

Kenora (January 17, 1983)

Rainy Lake Regional Tribal Chiefs, Incorporated
Mr. Alex Skead
Chief Willie Wilson
Mr. Peter Kelly
Chief Don Jones
Mr. Rudy Morrisseau, General Manager
Mr. Moses Tom, Big Grassy Band
Mr. Delbert Horton, Rainy River Band

Dryden Tribal Area Bands
Tribal Area Chief Arnold Gardner

Rat Portage Band
Chief George Kakeway
Mrs. Madeline Skead, Band Member
Councillor Doug Skead

Shoal Lake Band No. 39
Chief Robin Greene

Grand Council of Treaty No. 3
Grand Chief John P. Kelly

Thunder Bay (January 20, 1983)

Northern Superior Ojibway Chiefs' Council
Chief Roy Michano, Heron Bay Indian Band
Chief Timothy Esquega, Gull Bay Indian Band
Mr. Anthony Carfagnini, Counsel
Chief Douglas Sinoway, Whitesand Indian Band

Ontario Native Women's Association
Ms. Donna Phillips, President
Ms. Marlene Pierre, Director
Ms. Priscilla Simard, Provincial Co-ordinator

Lac des Milles Lacs Indian Band
Chief Harvey Churchill

Assembly of First Nations
Grand Chief Peter Kelly, Ontario Vice-President

Ontario Métis Association
Mr. Mike McGuire, Secretary Treasurer

Sudbury (March 24, 1983)

Anishinabek Nation
Chief Joe Miskokomon, Grand Council Chief

West Bay Band
Mr. Vic Migwans
Mr. Lewis Debassige

Garden River Band
Chief Arnold Solomon

Nipissing Band
Chief Phil Goulais

Cockburn Island
Chief Norma Fox (Wagosh)

Kettle Point (March 28, 1983)

Chippewas of Kettle and Stony Point Reserve
Chief Milton (Bud) George

Saugeen Reserve
Chief James Mason

Chippewas of the Thames Reserve
Chief Ether Deleary

Anishinabek Nation
Chief R.K. (Joe) Miskokomon, Grand Council Chief

Christian Island Reserve

Chief Rod Monague

Chippewas of Sarnia
Chief Ray Rogers

London (March 29, 1983)

Association of Iroquois and Allied Indians
Mr. Gordon Peters, President
Councillor Linda Commandant, Gibson Reserve
Chief Alfred Day, Oneida Reserve

Native Women's Association of Canada
Ms. Jeanette Corbière Lavell

Lansdowne House (July 5, 1983)

Central Tribal Council
Chief Peter Moonias, Lansdowne House

Elder Cameron Moonias, Lansdowne House
Mr. Donat Moonias, Lansdowne House
Chief Tom Shewaybick, Webequie
Councillor Alfred Mekinak, Webequie
Councillor Victoria Atlookan, Fort Hope
Mr. Dennis Cromartie, Interpreter

Kayahna Tribal Council
Mr. Simon Frogg, Community Representative, Long Dog Lake Community and Interpreter
Chief John Bighead, Wunnumin Lake Band
Chief Jeremiah McKay, Kasabonika Lake Band
Chief Simon Brown, Wapekeka Band
Councillor Joseph Sainnawap, Kingfisher Lake Band

Windigo Tribal Council
Mr. Charles Fox, Chairman

Grand Council Treaty No. 9
Grand Chief Frank Beardy
Mr. Fred Plain, Special Advisor to the Grand Chief
Commissioner Dennis Cromartie, Nishnawbe-Aski Commission

Moose Factory (July 6, 1983)

Attawapiskat Band
Chief John B. Nakogee

Fort Albany Band
Chief Alec Metatawabin
Mr. William Sutherland
Mr. Louis Nakogee Sr.

Moose Factory Reserve
Chief Ernest Rickard
Mr. Sinclair Cheechoo, Band Member
Mr. Ed Faries Jr., Councillor

Grand Council Treaty No. 9
Grand Chief Frank Beardy
Mr. Fred Plain, Special Advisor to the Grand Chief

Mocreebec
Mr. Allan Joly, Director Chief
Mr. Fred Wapache, Co-ordinator
Mr. Brian Craik, Co-ordinator for the Grand Council of the Crees of Quebec

Moosonee Metis and Non-Status Indian Association
Mr. Earl Danyluk, President
Mr. Sydney Moore, Vice-President

Native Council of Canada
Mr. Louis (Smokey) Bruyère, President

Ottawa

**Department of Indian Affairs and Northern Development*

Mr. R.J. Fournier, Acting Deputy Minister

Mr. I. Cowie, Acting Assistant Deputy Minister, Corporate Policy

Mr. D.E. Goodleaf, Director General, Program Planning & Policy Co-ordination, Indian & Inuit Affairs Program

**Assembly of First Nations*

Dr. David Ahenakew, National Chief

Mr. Ernie Daniels, Prairie Regional Vice-Chief

**Native Women's Association of Canada*

Ms. Jane Gottfriedson, President

Ms. Marian Sheldon, Second Vice-President

Mrs. Agnes Mills, Secretary

**Department of Justice*

Mr. Ian Binnie, Associate Deputy Minister

Mr. Fred Caron, Legal Adviser, Indian Affairs Department

**Department of National Health and Welfare Canada, Medical Services Branch*

Mr. Jack Sinclair, Assistant Deputy Minister

Mr. Peter Cameron, Director General, Policy Planning and Evaluation

Mr. George Campbell, Director General Operations

Mr. Rob Ritter, Director, Community Based Health Systems

Dr. A. Murdock, Acting Associate Director General (East)

**Department of the Secretary of State*

Mr. Jean-Paul Lefebvre, Assistant Under Secretary of State, Citizenship and Official Languages

Mr. Jim Lanigan, Acting Director, Native Citizens Directorate

**Native Council of Canada*

Mr. William L. Wilson, Vice-President

**Canadian Indian Lawyers' Association*

Mr. William Badcock, Member of the Board of Directors

Miss Judy Sayers, Secretary Treasurer

Conne River Indian Band Council

Chief William Joe

Miss Marilyn John, Councillor

Mr. Jerry Wetzel, Band Administrator

National Indian Business Association

Mr. Noel Starblanket, President

Mr. Irwin Goodleaf, Vice-President

Federation of Saskatchewan Indian Nations

Chief Sol Sanderson, President

Mr. Felix Musqua, First Vice-Chief

Arki, Nahwegahbow and Associates

Mr. David C. Nahwegahbow
Mr. Donald Allen
Mr. Robert Birt
Mr. Gary Phomim
Mr. Michael Posluns

Six Nations Council

Chief Wellington Staats
Mr. Phil Monture, Research Director
Mrs. Dale Davis, Research Assistant
Mr. Norman E. Lickers, Research Consultant
Councillor Peter Smith
Councillor Lewis Staats
Councillor Howard Thomas
Councillor Raymond Hill
Councillor Amos Keye
Councillor William White
Councillor Shirley Farmer
Councillor John Staats
Councillor George Johnson
Miss Charlene Bomberry, Research Secretary

Policy Development Group Limited

Dr. Harold Dyck
Mr. Walter Rudnicki

Thalassa Research Associates

Dr. Dan Gottesman, Partner
Mr. Rob Egan, Partner
Mr. Harold Wilson, Consultant

Haudenosaunee Confederacy

Mr. Bob Antone
Mr. Venus Walker
Mr. Bruce Elijah
Mr. Loran Thompson
Mr. Mike Myers
Mr. Robert Jamieson

Blood Tribe

Mr. Wayne Wells, Councillor
Mr. Leslie Healy, Councillor
Mr. Virgil Brave Rock, Councillor
Mr. Narcisse Blood, Technician

University of Lethbridge

Professor Leroy Little Bear

Native Women's Association of Canada

Ms. Jane Gottfriedson, President

Mrs. Gail Stacey Moore, Chairperson, Indian Act and Constitution Committee, Board of Directors

Assembly of First Nations

Mr. David Ahenakew, National Chief

Federation of Saskatchewan Indian Nations

Chief Sol Sanderson

Coopers & Lybrand

Mr. Glenn Ross, Partner

Mr. Gary Peall, Manager

Teme-Augama Anishnabai

Chief Garry Potts

Keewatin Tribal Council

Elder Peter Beardy

Chief Adam Dick

Swampy Cree Tribal Council

Chief Charles Constant

Chief Esan Turner

Island Lake Tribal Council

Chief Joe Guy Wood

Manitoba Keewatinowi Okemakanak

Mr. Ovide W. Mercredi, Legal Counsel

QUEBEC

Restigouche (April 25, 1983)

Restigouche Band

Chief Ronald Jacques

Elder Alphonse Metallic

Mr. Fred Isaac, Aid

Ms. Rita Dagenais, Legal Advisor

Councillor Jerry Wysote

Gaspé Band

Chief Léon Jeannotte

Val d'Or (May 24, 1983)

Algonquin Council of Western Quebec

Grand Chief Fred Kistabish

Mr. Louis-Marie Fortin, Consultant

Chisasibi (May 25, 1983)

Grand Council of the Crees

Grand Chief Billy Diamond, Chairman, Cree Regional Authority
Executive Chief Philip Awashish, Vice-Chairman, Cree Regional Authority
Mr. Henry Mianscum, Director General, Cree Regional Authority
Chief Henry Diamond, Rupert House
Mr. Allan Happyjack, Waswanipi
Chief James Bobbish, Chisasibi
Chief Walter Hughboy, Wemindji
Mr. Robert Kanatewat, Great Whale River
Chief Ted Moses, Eastmain
Chief George Wapachee, Nemaska
Mr. Peter Hutchins, Legal Counsel
Mr. Norman Hawkins, Consultant

Cree School Board

Grand Chief Billy Diamond, Chairman
Mr. Allan Happyjack, Director General
Mrs. Jane Pachano, School Commissioner, Chisasibi
Mr. Bill Grodinsky, Legal Counsel

Cree Board of Health and Social Services of James Bay

Mr. Steven Bearskin, Assistant General Manager
Mr. Bill Grodinsky, Legal Counsel

Pointe Bleue (May 26, 1983)

Attikamek-Montagnais Council

Mr. René Simon, President
Chief Armand Noé Germain, Pointe Bleue Reserve
Mr. Ernest Ottawa, Vice-President
Mr. Raphaël Picard, Resource Person
Mr. Camille Vallant, Resource Person

Huron Village Band

Chief Max "Oné-Onti" Gros-Louis

Montagnais Women's Association

Mrs. Jo Ann Gill, President, Pointe Bleue Chapter
Mrs. Marthe Gill

Naskapis de Schefferville Band Council

Mr. John Mameamskum, Naskapi Representative for Cree/Naskapi (of Quebec) Act Negotiations
Mr. Robert A. Pratt, Legal Advisor

Kahnawake (May 27, 1983)

Mohawk Council of Kahnawake

Sub-Chief Tom Porter

Chief Joe Norton
Mr. Billy Two Rivers
Mrs. Myrtle Bush
Mr. Richard White
Mr. Donald Horne
Mrs. Ida Goodleaf

Kanesatake (Oka) Mohawk Nation
Mr. Gerry Peltier, Chief Advisor
Mr. Peter Hutchins, Legal Advisor

SASKATCHEWAN

Saskatoon (March 1, 2 and 3, 1983)

Federation of Saskatchewan Indian Nations
Mr. Sterling Brass and Mr. Vern Bellegard, Chairmen
Senator John B. Lootoosis
Mr. Gary Waters, Consultant
Chief Sol Sanderson
Mr. Wayne Ahenakew, Treasurer
Ms. Beth Cuthand

Treaty No. 2
Senator Bill Standingready

Treaty No. 4
Senator Henry Langan

Treaty No. 5
Senator Thomas Young
Mr. Stan Wilson, Interpreter

Treaty No. 6
Senator Angus Merasty

Treaty No. 8
Senator Louis Chicken
Ms. Mary Rose Yooya, Interpreter

Pasqua Band
Elder Walter Gordon
Chief Lindsay Cyr

Starblanket Band
Chief Irwin Starr

Whitebear Band
Chief Brian Standingready

Yorkton District Chiefs
Mr. Norman Stevenson, District Representative

Lac La Hache Band
Chief Joe Tsannie

Peepeekesis Band
Elder Walter Dieter
Chief Aubrey Goforth
Chief George Poitras

Gordon Band
Senator Hilliard McNabb

James Smith Band
Chief Angus McLean

Saskatchewan Indian Education Commission
Mr. Clive Linklatter, Member

Red Earth Band
Chief Alvin Head
Mr. Ken Hodgins, Resource Person

Prince Albert Student Residence
Mr. Howard Bighead, Administrator

Saskatchewan Indian Federated College
Mr. Dennis Acoose, Director

Saskatchewan Indian Cultural College
Mr. Alex Greyeyes, Director

Saskatchewan Indian-Community College
Mr. Ray Ahenakew, Director

Saskatchewan Services for Off-Reserve Treaty Indians
Ms. Elsie Roberts

Black Lake Band
Chief Ben Toutsait
Ms. Mary Rose Yooya, Interpreter

Fond du Lac Band
Acting Chief Norbert Fern

Saskatoon District Chiefs Convention
Chief Joe Quewezance
Mr. Andy Michael, President

Shellbrook District Chiefs
Senator Lorne Ahenakew

Piapot Band
Chief Roland Crowe

Regina Indian Development Association
Mr. Glen Gordon

Saskatchewan Indian Federated College Students Union
Mr. Syd Fidler

Saskatchewan Indian Women's Association
Mrs. Angeline Roberts, President
Mrs. Dorothy Bird, Secretary
Senator Philomene Gamble
Chief Mary Anne Walker, Okanese Band

Lac La Ronge Band
Senator Angus Merasty

Peter Ballantyne Band
Elder Horace Sewaps

Montreal Lake Band
Chief Roy Bird

Indian Equity Foundation
Mr. Del Anaquod, Director

James Smith Band
Elder George Burns
Elder Joe Turner

Ochapowace Band
Chief Cameron Watson

Economic Action
Mr. Don Pooyak, Director

Saskatchewan Indian Nations Company (sinco)
Mr. James Burns, Director of Operations

Cowessess Band
Chief Henry Delorme

Muscowpetung Band
Chief Eugene Anaquod

Saskatchewan Indian Veteran's Association
Mr. Ernie Crowe, President
Senator Walter Dieter
Senator Henry Langan

Dakota Nations
Mr. Cyrus Standing, Wahpeton Band
Chief Melvin Isnana, Standing Buffalo Band

Regina (March 4, 1983)

Association of Metis and Non-Status Indians of Saskatchewan
Mr. Jim Sinclair, President
Mr. Jim Durocher, Provincial Treasurer
Mr. Rob Millen, Legal Counsel

Saskatchewan Native Women's Association

Ms. Georgina Fisher, President

Ms. Myrelene Ranville, Consultant

Ms. Vicky Wilson, Northern Co-ordinator

Ms. Leona Blondeau, Executive Director

Saskatchewan Association of Northern Local Governments

Mr. Michael J. Blackman, Chairman

Mr. Max Morin, Vice-Chairman

Mr. George Smith, Overseer, Pinehouse Local Community Authority No. 9

Mr. Lawrence Yew, M.L.A., Cumberland Constituency

YUKON

Whitehorse (May 9 and 10, 1983)

Government of Yukon

Mr. C.W. Pearson, Government Leader

Mr. Gerry Piper, Administrator, Land Claims Secretariat, Department of Economic Development and Intergovernmental Relations

Mr. Willard Phelps, Yukon Government Negotiator, Yukon Indian Land Claim

N.D.P. Caucus

Mr. Tony Penikett

Mr. Dave Porter

Mayo Indian Band

Chief Robert Hager

Elder Harry McGinty

Ms. Alla Melancon

Mr. Albert Peter

Mr. Richard Moses

Association of Yukon Communities

Mr. André Carrel

Champagne-Aishihik Band

Chief Paul Birckel

Councillor Dorothy Wabisca

Ms. Barbara Hume, Social Worker

Councillor Harold Kane

Council for Yukon Indians

Mr. Willie Joe, Vice-Chairman

Elder Eliagh Smith

Ms. Marilyn Van Bibber, Director, Department of Health and Social Development

Mr. David Joe, Chief Negotiator

Mr. Mike Smith, Vice-Chairman

Mr. Victor Mitander, Negotiator

Yukon Indian Women's Association

Ms. Bobbi Smith, Vice-President, Researcher and Information Officer

Ms. Virginia Smarch, Elder, Teslin Indian Band

Mr. Kenny Kane, Director of Northern Native Broadcasting, Champagne-Aishihik Indian Band

Mrs. Betty Pope, Past Elder Member, Social Assistance Administrator, Carcross Indian Band

Ms. Mary Jane Jim, Training and Employment Co-ordinator, Champagne-Aishihik Band

Mrs. Jean Gleason, Director of Yukon Indian Cultural Education Society, Member

Ms. Marion Sheldon, Secretary, Teslin Indian Band

APPENDIX B

OTHER MEMBERS WHO PARTICIPATED

Mr. René Gingras, M.P.
(Liberal, Abitibi)

Mr. Jack Burghardt, M.P.
(Liberal, London West)

Mr. Girve Fretz, M.P.
(P.C., Erie)

Mr. Lorne Greenaway, M.P.
(P.C., Cariboo-Chilcotin)

Mr. John A. MacDougall, M.P.
(P.C., Timiskaming)

Mr. John McDermid, M.P.
(P.C., Brampton-Georgetown)

Mr. Terry Sargeant, M.P.
(N.D.P., Selkirk-Interlake)

Mr. Doug Anguish, M.P.
(N.D.P., The Battlefords-Meadow Lake)

Mr. Derek Blackburn, M.P.
(N.D.P., Brant)

Ms. Marlyn Kane, Liaison Member
Native Women's Association of Canada

Mr. Clem Chartier, Liaison Member
Native Council of Canada

APPENDIX C

INDIAN ORGANIZATIONS AND INSTITUTIONS

Assembly of First Nations

In the first half of this century several factors worked against the establishment of national Indian organizations. They included Indian poverty and adult illiteracy, geographic dispersal, isolation of Indian communities, linguistic diversity and the absence of a shared second language, interference by Indian agents or the RCMP, a DIAND requirement that all grievances be routed through the local Indian agent and a section in the *Indian Act* (1927) prohibiting political organizing.*

Several early organizations faltered because of government suppression or interference or as a result of internal divisions. In 1968, the National Indian Brotherhood (NIB) was established as a federation of provincial and territorial organizations; with no representation from chiefs or band councils, it had no direct links with bands.

At the end of the 1970s, changes in the NIB structure were sought to give chiefs more direct control over national policies and to create an organization that would strengthen traditional Indian governments and respect the diversity of each Indian nation, while at the same time, encouraging mutual support for common goals. In April 1980,

> . . .hundreds of Chiefs, representing the People of the First Nations, gathered in an Assembly to re-proclaim the right of the First Nations to govern themselves. The Assembly was to become a way in which each of the First Nations could unite with the others for mutual support, co-operation and to develop national policies for and by Indian People.**

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* J. Rick Ponting and Roger Gibbons, *Out of Irrelevance*, 1980, p. 196.

** AFN, *Our Land, Our Government, Our Heritage, Our Future*, brochure.

A DECLARATION OF THE FIRST NATIONS

We the Original Peoples of this land know the Creator put us here.

The Creator gave us laws that govern all our relationships to live in harmony with nature and mankind.

The laws of the Creator defined our rights and responsibilities.

The Creator gave us our spiritual beliefs, our languages, our culture, and a place on mother earth which provided us with all our needs.

We have maintained our freedom, our languages, and our traditions from time immemorial.

We continue to exercise the rights and fulfill the responsibilities and obligations given to us by the Creator for the land upon which we were placed.

The Creator has given us the right to govern ourselves and the right to self-determination.

The rights and responsibilities given to us by the Creator cannot be altered or taken away by any other Nation.

Assembly of First
Nations Conference
December 1980

TREATY AND ABORIGINAL RIGHTS PRINCIPLES

1. The aboriginal title, aboriginal rights and treaty rights of the aboriginal peoples of Canada, including:

   (a) all rights recognized by the Royal Proclamation of October 7th, 1763;

   (b) all rights recognized in treaties between the Crown and nations or tribes of Indians in Canada ensuring the Spiritual concept of Treaties;

   (c) all rights acquired by aboriginal peoples in settlements or agreements with the Crown on aboriginal rights and title;

   are hereby recognized, confirmed, ratified and sanctioned.

2. "Aboriginal people" means the First Nations or Tribes of Indians in Canada and each Nation having the right to define its own Citizenship.

3. Those parts of the Royal Proclamation of October 7th, 1763, providing for the rights of the Nations or tribes of Indians are legally and politically binding on the Canadian and British Parliaments.

4. No law of Canada or of the Provinces, including the Charter of Rights and Freedoms in the Constitution of Canada, shall hereafter be construed or applied so as to abrogate, abridge or diminish the rights specified in Sections 1 and 3 of this Part.

5. The Parliament and Government of Canada shall be committed to the negotiation of the full realization and implementation of the rights specified in Sections 1 and 3 of this Part.

On April 20, 1982, the Chiefs adopted a new structure, developed over the previous two years by an interim body that included the NIB Executive Council. The new structure, called The Assembly of First Nations, enables the Chiefs to participate in developing and establishing policy at the national level. The NIB corporate structure was retained for legal purposes, but the Assembly did not incorporate under Canadian law.

Coalition of First Nations

The Coalition of First Nations, representing people from bands in British Columbia, Alberta, Manitoba, Quebec and the Maritimes, was formed in Winnipeg during a two-day meeting on March 10-11, 1983 by bands that had withdrawn from the Assembly of First Nations because they disagreed with its decision to participate in the First Ministers' Conference of March 15-16, 1983. It maintained that discussions relating to aboriginal and treaty rights should be between Canada and the First Nations and should not involve the provinces.

Native Council of Canada

The Native Council of Canada (NCC) was established in 1970 to provide a national voice for Métis and non-status Indians in Canada. Earlier this year the Métis organizations of western Canada broke away and formed their own organization, the Métis National Council.

Native Women's Association of Canada

Representing status Indian, non-status Indian, Métis and Inuit women, the Native Women's Association of Canada (NWAC) is the national organization representing and speaking on behalf of native women's organizations in each province and the two territories.

The NWAC lobbies for change on a number of fronts, including the following:

- elimination of discriminatory provisions in the *Indian Act* and reinstatement of those individuals who lost Indian status due to these provisions;
- provision of an equality rights clause in the aboriginal and treaty rights section of the Constitution to ensure that aboriginal peoples do not suffer discrimination in the future;
- employment and training, cultural, social, and economic development, and health needs of Native women; and
- child welfare.

Other First Nations Units

Indian people have also joined together to form units based on treaty areas or geographic regions. In addition, bands unite to form education, economic development or agricultural councils, and national bodies have been formed to support cultural centres.

For some Indian people, the tribal council is an historical unit of Indian government that existed at the time the Europeans arrived in the New World. For others, it is unit created by Indian governments. In both instances, tribal councils are formed by a group of bands coming together for common purposes but retaining individual band authority.

Tribal council activities vary from one part of Canada to another. Some councils are mainly administrative bodies, providing clerical, administrative and technical assistance to member bands. Other councils are service-oriented, delivering services such as policing, education and family services. This is the case in Manitoba, but a council is also seen as playing a role in the development of self government:

> The uniting of bands to form tribal councils is oriented toward attaining the goal of local government, self-determination and independence, each focusing on slightly different program areas to reach these goals. These new organizations have an entirely different emphasis from past Indian organizations. Tribal councils are programmatic, not political. Working from the principle that there is strength in unity, tribal councils act from the premise that the bands are primary sources of authority; thus tribal councils are given direction from representatives of their member bands. (Dakota Ojibway Tribal Council, Special 2:81)

Explained Chief Arnold Gardner of the Dryden Tribal Area Bands,

> It is in our best interest if we do things collectively... if we combine our moneys together we can hire the resource people so that we can best utilize the money we do have. (Special 1:60)

In British Columbia, by contrast, tribal councils are viewed as political units providing support to chiefs and councils in their political activities. These differences, coupled with the fact that tribal councils have no legal status, create certain anomalies, particularly in the area of funding. For example, the Department of the Secretary of State provides core funding to B.C. tribal councils through its program for funding political organizations. DIAND also funds certain services and programs administered by tribal councils, but as witnesses told the Committee, funds are inadequate, are considered non-essential by DIAND, and are in some cases reduced by DIAND in an effort to control council activities. Moreover, the federal government requires that tribal councils incorporate, making them subject to provincial law. Witnesses criticizing this requirement insisted that "tribal councils must be legally recognized in Canadian law". (Special 7:35)

APPENDIX D

FEDERAL GOVERNMENT STRUCTURES DEALING WITH INDIAN PEOPLE

Departments

Department of Indian Affairs and Northern Development

The principal federal structure affecting Indian people is the Department of Indian Affairs and Northern Development (DIAND), whose control and influence are apparent in nearly every aspect of their lives. The *Indian Act*, which sets forth the duties and responsibilities of the Department, regulates the lives of Indians from registration at birth to the probate of wills. This all-encompassing legislation covers for example, the holding of property, rules about inheritance, the election of band councils, the provision of education, and exemptions from taxation. As a result the Department comes close to a single-agency concept under which all programs and services are delivered by one organization. The comprehensive nature of the Department cannot be overstated.

> On the reserve, the IIAP (Indian and Inuit Affairs Program) is a 'total' institution in that it has a monopoly on the delivery of services to a captive clientele. Its organization is characterized by specialization, hierarchy, and regimentation, while its clients are uneducated, unspecialized, and varied. By limiting the choices available to its Native Clients, the IIAP shapes and standardizes Native behaviour at minimal cost and risk to itself.*

In addition to the *Indian Act*, the Department works from a legislative mandate of 37 other federal acts and 13 treaties.

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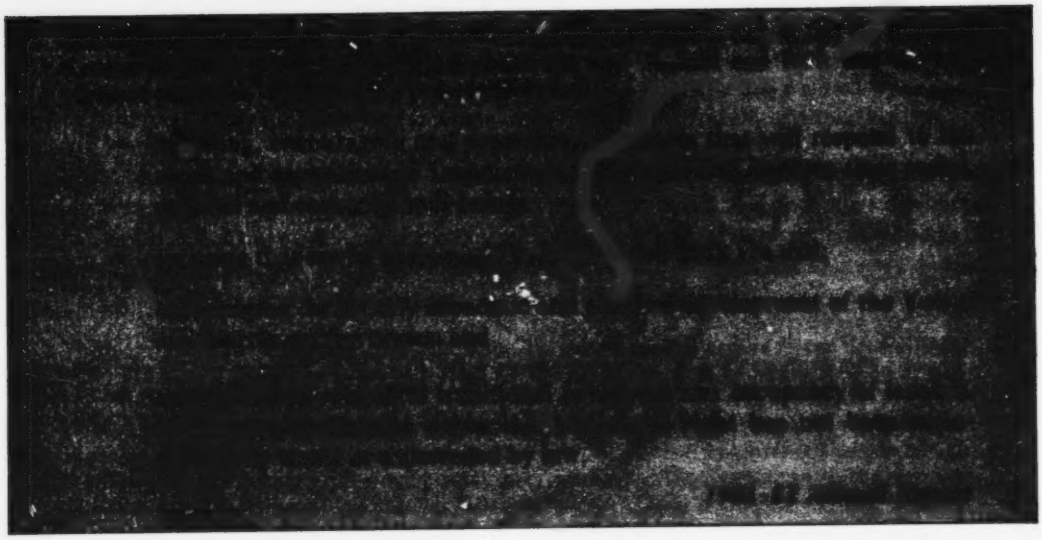
* James S. Frideres, *Native People in Canada: Contemporary Conflicts* (Scarborough, Ont.: Prentice-Hall, 1983), p. 227.



As well as providing services, the Department is the principal link between the federal government and Indian people on legal, treaty and, until recently, constitutional matters; it sees itself as supporting and assisting Indian efforts to achieve "their cultural, social and economic needs and aspirations". (DIAND 1983-84 Estimates)

Indian and Inuit Affairs is one of four DIAND programs. The Indian Affairs program in turn is divided into nine sub-programs: Administration, Reserves and Trust, Education and Employment Development, Social Services, Community Infrastructure and Services, and Band Government. The Office of Native Claims is located in another program (Administration). It is responsible for reviewing and negotiating the settlement of claims.

On the other hand, the Native Claims Program, one of DIAND's four major divisions, funds the research and preparation of claims by native people and pays compensation to claimants once agreement has been reached.

Department of National Health and Welfare

The current budget for the Indian and Northern Health Services of the Department of National Health and Welfare (NHW) is $212 million. Over 2500 people are employed by the Medical Services Branch which operates 400 facilities such as hospitals, cottage hospitals, nursing stations, health centres and public health clinics. NHW also funds environmental and occupational health services, dental care and alcohol and drug abuse programs. Non-insured health benefits such as dental care, prescription drugs, eyeglasses, medical transportation and prostheses are also provided.

The cost of furnishing these services to Indians and Inuit was $80 million in 1982-83. Many of these services are similar to those provided to people who receive provincial social assistance allowances (for which Indians are not eligible because they live on reserves). Departmental officials also testified that the Department is spending $20 million for band-

administered health services, much of it for "community health representatives". The Department is also responsible for the National Native Alcohol and Drug Abuse Program. In April 1982 the Minister announced that the federal government would spend $154 million on this program over a 5-year period.

In 1979 the Department issued an Indian Health Policy which emphasized, among other things, community involvement in health care delivery. Among the efforts to encourage such involvement was the report of the Advisory Commission on Indian and Inuit Health Consultation, headed by Mr. Justice Berger. The Department is now studying the transfer of health services to Indian communities. Cabinet has approved $3.6 million for a two-year demonstration program to develop ways to carry out this transfer.

Secretary of State

The Department of the Secretary of State is responsible, through the Native Citizens' Directorate of the Department's Citizenship and Culture branch, for the "political development" of native peoples. In 1982-83 it provided programs costing close to $28.6 million to status and non-status Indian groups, Métis and Inuit.

Funds are provided for the administrative activities of national, provincial and territorial associations and, for the political activities of some tribal councils. Other programs assist or support native friendship centres and women's groups, communications societies and social or cultural development projects.

Department of Justice

The Department of Justice acts as legal counsel in advising DIAND and other departments "on the legal interpretation of the *Indian Act*, the reach of the constitutional authority of Parliament over native matters and generally any legal questions which arise in the course of administering the federal government programs and legislation". (Sub. 5:7) The Minister of Justice plays a lead role in the constitutional conferences on aboriginal rights. The Department also provides funding for programs "for areas where the legal system and the native communities interact". Finally, the Department makes funds available to native organizations and peoples where appropriate—for example, to prepare for and attend conferences dealing with the legal system.

The largest specific activity is the Native Court Worker Program, costing $2.4 million a year. Cost-shared with the provinces, this program has court workers familiar with native communities and problems available in court to assist native people involved with the law. (It does not operate in Nova Scotia, New Brunswick and Prince Edward Island.) A second program encourages native people to enter the legal profession; at present, $133,300 is allotted for the program.

Ministry of the Solicitor General

The Ministry of the Solicitor General administers the criminal justice system. Three activities are of relevance to native people. The Royal Canadian Mounted Police operates a Native Special Constable Program in all provinces and territories except Ontario, Quebec and New Brunswick. Native people account for ten per cent of the total inmate population in federal penitentiaries run by the Correctional Service. It is not possible to estimate the

amount of money spent to maintain incarcerated native people because the native inmate population varies greatly from region to region, as do costs. During 1981-82 the Ministry also provided approximately one million dollars for after-care services for native people through a number of programs, including Native Liaison Workers, Native Counsellors, Community Residential Boarding and Community Assessments and Supervision.

Central and Co-ordinating Agencies

While line departments such as DIAND and NHW provide direct services, Indian people are also greatly affected by the decisions of two co-ordinating agencies, the Ministry of State for Social Development (MSSD) and the Ministry of State for Regional Economic Development (MSERD), and by central agencies such as the Treasury Board and the Federal-Provincial Relations Office. While not dealing directly with Indian people, these agencies determine both general policy and the broad allocation of financial resources.

Treasury Board

The Treasury Board is Cabinet's expenditure committee. The federal government allocates and controls expenditures through an 'envelope system', which defines the resources available for each policy sector. The Department of Indian Affairs is part of the Social Affairs envelope, one of ten envelopes in the current system. The Cabinet Committee on Social Development, chaired by the Minister of State for Social Development, is responsible for distributing funds within this envelope to departments and agencies covered in the policy area.

The President of the Treasury Board maintains an overview of the government's expenditure plans and advises on the appropriate expenditure levels for the government as a whole and for each envelope. The Treasury Board Secretariat prepares the current expenditure plan, or Main Estimates, based on the decisions of the cabinet committees. The Secretariat also analyses departmental plans and programs, with particular emphasis on efficiency and effectiveness criteria.

Ministry of State for Social Development

Established in June 1980, MSSD formulates and develops "new and comprehensive policies in relation to the activities of the Government of Canada that affect the welfare of the individual and social development. . .". Matters relating to Indian people fall under this mandate.

Specific proposals by DIAND or other departments and agencies for new programs or legislation relating to Indian Affairs are reviewed at a number of levels, including a committee of deputy ministers, the Cabinet Committee on Social Development and occasionally the full cabinet. The Ministry acts as a secretariat to the Cabinet Committee on Social Development, briefing its minister and preparing assessments of cabinet submissions, examining such things as the adequacy of interdepartmental consultation and the soundness of financial proposals.

MSSD is also involved in land claims; the secretary of MSSD chairs the Deputy Ministers' Committee on Comprehensive Claims, which advises the Cabinet Sub-committee on Comprehensive Claims.

Although the Ministry had a large role in preparing for the First Ministers' Conference of March 1983, most of the work for future conferences will be done by the Office of Aboriginal Constitutional Affairs.

Ministry of State for Regional Economic Development

MSERD was established in December 1978 and assigned a strong role in integrating and co-ordinating all policies and programs related to industrial and regional development. It also has an explicit role in the budgetary process; the Minister, as chairman of the Cabinet Committee on Economic Development, makes recommendations to Treasury Board on the allocation of financial, personnel and other resources to programs dealing with economic development. The Minister of State for Small Business and Tourism is responsible for the $345 million Native Economic Development Fund.

Federal-Provincial Relations Office and Office of Aboriginal Constitutional Affairs

Among the responsibilities of the Federal-Provincial Relations Office is co-ordinating federal participation in First Ministers' Conferences. Following the Aboriginal Rights Conference in March 1983, the Prime Minister announced the creation of an Office of Aboriginal Constitutional Affairs. Reporting through the Secretary to the Cabinet for Federal-Provincial Relations, the Office co-ordinates all activities within the federal government related to the ongoing constitutional process, as well as bilateral consultations between federal authorities and representatives of all aboriginal peoples. Its terms of reference include the following responsibilities:

- to undertake preparations for future constitutional conferences of First Ministers on aboriginal matters, including meetings of ministers and officials;
- to work closely with the representatives of aboriginal peoples and to ensure that they are consulted on a continuing basis and participate fully in preparations for constitutional conferences;
- to work with provincial and territorial governments in the search for an early resolution of aboriginal constitutional issues;
- to co-ordinate the activities of the federal departments and agencies participating in this ongoing process; and, more generally,
- to advise the government of Canada on these issues and ensure that the research and policy development required for their resolution are done expeditiously.

Although funding for the participation of aboriginal groups in First Ministers' Conferences comes from the Department of the Secretary of State, this Office is involved in negotiating the amount of funding with the organizations.

The Office is also involved in the bilateral process put in place through an exchange of letters between the Prime Minister and the National Chief of the Assembly of First Nations in December 1982. Bilateral negotiations on constitutional issues are now handled by this Office, while non-constitutional matters continue to be the responsibility of the Department of Indian Affairs.

Interdepartmental Committee

Health and Welfare officials told the Committee that cabinet had "directed DIAND to establish an interdepartmental committee to co-ordinate the various aspects related to the implementation of Indian self-government". (Sub 6:10) Further questioning revealed that this interdepartmental committee, composed of approximately 50 senior officials in DIAND, MSSD, the Federal-Provincial Relations Office, Treasury Board and the Canada Employment and Immigration Commission, had held only one meeting as of November 1982. (Sub 6:32)

APPENDIX E

HOW THE COMMITTEE ORGANIZED ITS WORK

The membership of the Special Committee on Indian Self-Government comprised seven Members of Parliament and representatives from three national aboriginal organizations. The members from the House of Commons were Keith Penner (Liberal, Cochrane-Superior), Chairman; Stan Schellenberger (P.C., Wetaskiwin), Vice Chairman; the Hon. Warren Allmand (Liberal, Notre-Dame-de-Grâce-Lachine East); J. Raymond Chénier (Liberal, Timmins-Chapleau); Jim Manly (NDP, Cowichan-Malahat-The Islands); Frank Oberle (P.C., Prince George-Peace River); and Henri Tousignant (Liberal, Témiscamingue).

To ensure that the Members of Parliament were fully aware of the concerns and perspectives of Indian people, three national aboriginal organizations were invited to work closely with the Committee. This practice had been established during the earlier Sub-committee on Indian Women and the Indian Act and had proved highly successful. The Assembly of First Nations (AFN) was asked to designate a representative to participate fully in the Committee's work as an *ex officio* member with all rights except that of voting. In addition, the Native Council of Canada and the Native Women's Association of Canada were invited to designate liaison members.

Roberta Jamieson was designated as the AFN representative. Marlyn Kane and Sandra Isaac served as liaison members from the Native Women's Association of Canada while the Native Council of Canada asked Clem Chartier and, later, Bill Wilson to act as its liaison members.

Staff

The Committee relied on its staff to plan its extensive schedule of travel and public hearings and to assist in the preparation of its report. François Prégent, assisted by Eugene Morawski served as Committee Clerks. They and their staff were responsible for the overall

administration of the Committee's work including travel plans, recording the meetings and keeping minutes. The committee staff also included researchers from the Library of Parliament, Katharine Kirkwood Dunkley and Barbara Plant Reynolds. Peter Dobell of the Parliamentary Centre for Foreign Affairs and Foreign Trade served as the policy co-ordinator. Each national aboriginal organization was entitled to have a person participate at the staff level: Danny Gaspé, Gail Macdonald and Rarihokwats (Assembly of First Nations); Elizabeth Moore (Native Women's Association); and Bill Lee (Native Council of Canada). Following a practice established by other parliamentary committees, each political party was represented by one staff person from the office of a Committee member: Penelope Muller (office of Keith Penner, M.P.); Iva Vranić (office of Stan Schellenberger, M.P.); and Stu Herbert, Randy Potts and Bett Tsa-Me-Gahl (sharing the position from the office of Jim Manly, M.P.).

Travel and Hearings

Early in its work the Committee decided that it should travel to all regions of Canada to conduct hearings and learn at first hand about the concerns of Indian people. There was also a commitment to hold a number of these meetings on reserves or in Indian-owned premises. Where those sites presented problems for any witnesses, an off-reserve site was scheduled. During several meetings, visits were arranged so that Committee members were able to see conditions on the reserves as well as Indian enterprises.

The following is a list of the meetings held outside Ottawa. Thirty-nine of the sixty public hearings were held on the road.

November 29, 1982	Stoney Reserve, Morley, Alberta
	Visit to Blackfoot Reserve, Gleichen, Alberta
November 30	Canadian Native Friendship Centre, Edmonton, Alberta
December 1	Canadian Native Friendship Centre, Edmonton, Alberta
December 2	Visit to Big Stone Cree Reserve, Wabasca, Alberta
	Slave Lake Native Friendship Centre, Slave Lake, Alberta
January 17, 1983	Ne-chee Friendship Centre, Kenora, Ontario
January 18	Long Plain Reserve, Long Plain, Manitoba
January 19	Indian and Métis Friendship Centre, Winnipeg, Manitoba
January 20	Thunder Bay, Ontario
February 14	Nanoose Reserve, Nanoose, British Columbia
February 15	Vancouver Indian Centre, Vancouver, British Columbia
February 16-17	Prince Rupert, British Columbia
March 1-3	Saskatchewan Indian Nations Company Offices (SINCO), Saskatoon, Saskatchewan
March 4	Regina, Saskatchewan
March 24	Sudbury, Ontario
March 28	Kettle Point Reserve, Kettle Point, Ontario
March 29	N'amerind Friendship Centre, London, Ontario
April 11	Vancouver, British Columbia
April 12-13	Kamloops Reserve, Kamloops, British Columbia
April 14	Prince George, British Columbia

April 15	Fort St. John, British Columbia
April 25	Restigouche Reserve, Quebec
April 25	Fredericton, New Brunswick
April 26	St. Mary's Reserve, Fredericton, New Brunswick
April 27	Eskasoni Reserve, Sydney, Nova Scotia
April 28	Sydney, Nova Scotia
May 9-10	Yukon Indian Centre, Whitehorse, Yukon
May 11-12	Yellowknife, Northwest Territories
May 24	Val d'Or, Quebec
May 25	Chisasabi Cree Community, Quebec
May 26	Pointe Bleue Reserve, Pointe Bleue, Quebec
May 27	Kahnawake Reserve, Quebec
July 5	Lansdowne House, Ontario
July 6	Moose Reserve, Moose Factory, Ontario

Of the 39 hearings on the road, 14 were held on reserves, 9 in friendship centres, 3 in Indian offices and 13 in hotels or public halls. In some cases hotels or halls were used because friendship centres or Indian-owned premises were too small.

The Committee also travelled to Washingon, D.C., and to several Pueblo reservations in New Mexico to learn about the experience of Indian people with various aspects of U.S. policies (see Appendix G). The purpose was to identify models that might be acceptable in Canada, as well as what might be unacceptable.

Selection of Witnesses

In its terms of reference the Committee was directed to hear from Indian people about the nature of their relationship with Canada. The Committee endeavoured to hear as many oral representations as possible from band councils, tribal councils, other organizations and individuals. The Committee heard a total of 215 oral presentations involving 567 witnesses. A complete list of the witnesses can be found in Appendix A.

At the outset, the Committee identified five broad categories of witnesses it wanted to hear:

1) Indian bands;

2) members at executive levels of the Assembly of First Nations, including regional vice-chiefs and members of the Confederacy of Nations;

3) representatives of Indian associations, such as provincial and territorial organizations and tribal councils;

4) other aboriginal organizations, regional or local; and

5) other organizations and individuals.

To ensure a representative cross-section of views, the Committee sought witnesses representing a variety of political experiences and organizational styles. As well, it wanted to hear

from bands of different socio-economic experiences; from different locations—some urban, some rural and some remote; and of varying populations.

Communications

To ensure that as many Indian bands and organizations as possible were informed about its activities, the Committee undertook a number of steps:

1) advertisements were placed in daily and selected weekly newspapers and all native publications throughout Canada to invite written submissions and requests to appear;

2) a letter from the Chairman was sent to all native organizations and band councils in November 1982 and in January 1983 advising them of the work of the Committee;

3) a copy of the minutes and proceedings of each meeting was sent to all chiefs; and

4) interviews were given with representatives from native and public news media.

Mindful of the need for public education of the non-Indian community about aboriginal and treaty rights and about self-government, the Committee hired a public relations firm, David Humphreys & Associates, to contact the local news media in each area where the Committee travelled. Interest in the work of the Committee increased, particularly after the televised First Ministers' Conference on Aboriginal Rights in March 1983. The hearings were covered by a total of 123 reporters. There were 59 interviews of Committee members for radio, 22 for television, and 30 interviews for newspapers.

Advance Work

In order to inform people about its work, the Committee hired Dan Brant of First Nations Consultants to assist with advance arrangements. He was to visit each area prior to the public meetings to discuss the Committee's mandate with scheduled witnesses and to answer any questions about the arrangements for the public meetings. He prepared a pamphlet for prospective witnesses that outlined the work of the Committee and contained information on the format of a public hearing, how to present a submission, and the members of the Committee. In addition, he distributed a list drawn up by the staff to illustrate the type of questions that might be posed during a meeting. This list was intended to indicate the Committee's interests and to assist prospective witnesses in writing submissions and preparing for hearings.

Research Projects

As the Committee conducted its study, four subjects were identified as important areas where specialized information was required. It was decided to commission research projects from experts in each area. Terms of reference for each study were drawn up by Committee members and staff. These are included in Appendix F.

Many Indian witnesses voiced concerns about the difference between the amount of money allocated for Indian people and the amount actually reaching them, and about the excessive conditions and accounting requirements attached to the use of these funds. Glenn Ross, Gary Peall and Alexandre Moricz of Coopers & Lybrand (Ottawa) undertook a study of federal expenditures and mechanisms for their transfer to Indians to examine these concerns and to offer suggestions for improving the fiscal transfer.

Almost all the Indian witnesses referred to the special relationship between the government of Canada and Indian people. To explore the nature of this relationship more fully, a project entitled "The First Nations and the Crown: A Study of Trust Relationships" was commissioned from a coalition of David Nahwegahbow, Michael Posluns, Douglas Sanders and Don Allen and Associates. In addition to describing various aspects of the trust relationship, this project included an analysis of the financial practices relating to the trust accounts.

To see whether the experience of other countries could offer guidance, a comparative study of the indigenous peoples' situation in New Zealand, Australia, Japan, the United States, Denmark and Norway was prepared by Walter Rudnicki and Harold Dyck of Policy Development Group.

As it examined the subject of self-government, the Committee realized the need to identify more fully an essential component of self-government, the economic base. It contracted with Dan Gottesman, Rob Egan, Harold Wilson and Allyson McKay of Thalassa Research Associates of Victoria to undertake a study, "The Economic Foundations of Indian Self-government". Included in this research was an analysis of several successful and unsuccessful band-operated enterprises.

APPENDIX F

RESEARCH PROJECTS COMMISSIONED BY THE COMMITTEE

1. QUESTIONS RELATING TO THE ECONOMIC FOUNDATION FOR INDIAN SELF-GOVERNMENT

(Thalassa Research Associates)

A 1. Prepare an overview of the treaties and agreements made between the government of Canada and the Indians in regard to economic provisions.

2. Collate information in the various agreements and treaties and relate this information to the Committee's discussion of Indian self-government. This would include discussion of modernization of the economic portions of such agreements.

3. Take examples of treaties and agreements from both the pre-Confederation and post-Confederation periods and examine their current effect on Indian socio-economic conditions. Government programs to deal with this aspect of the treaties and agreements should also be taken into account.

B 1. Examine the legal or legislative obstacles faced by Indians in attempting to build viable and secure (long-term) economic bases across the country. Consider the legal problems faced by both individual band entrepreneurs and band councils. The report should be cognizant of the increasing desire of Indian bands to act collectively through tribal associations and other mechanisms.

2. Examine six to ten Indian-controlled economic ventures, one half successful and one half unsuccessful, in order to identify the factors contributing to success or lack of success. Relate the case studies to the other points investigated in this paper. Consider the base of the venture (renewable or non-renewable), the method of accounta-

bility to the band population at the band council and individual level, and the political, social and economic effects of the venture on the band community and individual members.

3. Comment on the interaction of bands and tribal associations with local and regional economies across Canada. Examine conflicts between non-Indian and Indian economic interests, both on and off reserve, including a discussion of multiple land use and conflicts in the use of renewable and non-renewable resources. Suggest alternative economic models for interaction between bands and tribal associations and local and regional economies.

4. Review the compatibility (or incompatibility) of various economic activities with different Indian cultures (e.g., a critical look at tourism, craft industries, resource development) and comment on the implications.

2. VARIOUS MODELS FOR RELATIONS BETWEEN INDIGENOUS PEOPLES AND GOVERNMENTS

(Policy Development Group)

1. The purpose of this research project is to examine and assess relationships, institutions and mechanisms developed in other countries with indigenous peoples with cultural and linguistic differences. The aim of this project is to identify models, or elements of models, that have relevance to the development of Indian government in Canada and that might be introduced in this country.

2. The context should be carefully described, the structure itself and the way it functions clearly set down, its effect on the peoples involved carefully examined, its potential utility in Canada assessed and the difficulties in introducing the structure identified. Among countries to be included are New Zealand, Denmark, Norway, Sweden and the United States and any others the consultants consider relevant.

3. Consider also other constitutional models for accommodating minorities in states that are relevant to the development of Indian government in Canada.

4. As a background to this study, and for the purpose of comparison, examine Indian/government relations in Canada. How have the original Indian governmental powers been transferred, abridged, abdicated or otherwise interfered with, illustrating with a few case studies?

3. TRUST RELATIONSHIPS BETWEEN THE FEDERAL GOVERNMENT (the Crown) AND THE INDIAN PEOPLE OF CANADA

(Arki and Nahwegahbow)

1. Examine the origins and the nature of the trust relationships between the federal government (the Crown) and the Indian peoples of Canada, indicating how these

relationships have been modified (if at all) by legislation and by judicial decisions or otherwise. Identify the parties between which the trust relationships lie. Analyse the trust relationships as they exist today from the legal, economic, political, fiscal, moral and cultural perspective.

2. Identify the source of the trust relationships, including

   a) treaties and other agreements between the federal government and Indian people, and pre-Confederation proclamations, treaties and other agreements;

   b) aboriginal rights;

   c) obligations arising out of international law; and

   d) other sources.

   Comment on the perceptions of each of the parties concerned including the reasons.

3. Distinguish alternative ways in which the various trust responsibilities of the federal government are being exercised with respect to

   a) financial dealings in which trusts may be involved;

   b) federal dealings with provincial governments on behalf of Indian people and the First Nations;

   c) the delivery of services; and

   d) Indian lands.

   Comment on how these different relationships have been perceived over the years by each of the parties concerned, on the legal position they now take and on their compatibility when the positions differ. Where the federal government exercises its trust responsibilities through contracts, examine the arrangements and mechanisms used.

4. Identify what funds are being held and in what manner by the Minister of Indian Affairs and Northern Development in his capacity as trustee. Describe how these funds originated and are administered, what interest is paid on them and what financial and other problems have been identified in the past and are evident today. Differentiate trust relationships affecting Indian individuals and Indian nations. Why has the Auditor General been unable to audit the trust funds and what could be done to correct this situation now or in the future?

4. FEDERAL EXPENDITURES AND MECHANISMS FOR THEIR TRANSFER TO INDIANS

(Coopers & Lybrand)

1. For the most recent year for which expenditure figures are available, identify the total expenditures from moneys voted annually by Parliament that are directly or indirectly intended for the benefit of Indian people in Canada.

a) the moneys expended to be broken down by department and agency;

b) when moneys are not specifically voted for Indians (e.g., DREE grants), make an estimate of the amount involved; delete, by subtraction, any funds derived from Indian sources, so as to present a net figure;

c) insofar as possible, estimate the portion of these moneys directly going to the following recipients:

band governments or other band entities

tribal councils

regional or provincial organizations

national organizations

other bodies and recipients of program funds, e.g., friendship centres, newspapers, training programs, etc.

individuals living on reserves

individuals living off reserves

d) when funds are voted generally for aboriginal people, estimate the proportion of the moneys intended for status Indians, non-status Indians, Métis and Inuit.

e) identify where possible whether moneys voted are in the form of statutory payments, grants, accountable transfers or goods and services and comment on the reasons for each form of payment including whether they appear in votes 10 and 15; and when possible, indicate when the payments fall under treaty obligations, aboriginal rights or trust responsibilities;

f) indicate where moneys voted are not subsequently expended and where funds have been transferred from one allotment to another;

g) indicate where moneys are discretionary or non-discretionary.

2. Identify separately, where information is readily available, funds being provided by provincial governments and authorities. Federal funding provided through the two territorial governments should be identified separately.

3. Insofar as possible, identify the proportion of the moneys voted that is directly transferred to Indian people or expended on goods or services for their direct benefit. Provide information on the amount of funds voted that do not reach Indian people and identify what happens to those funds. In particular, when funds are administered by Indian bands and/or their organizations for the delivery of services, assess the extent to which there is duplication of administrative structures, or whether there has been no corresponding reduction of person years and dollars in DIAND.

Comment on the reasons for the results.

4. To gain information in a specific instance, examine the present situation involving two or three Indian bands or tribal councils (to be determined following further inquiries) that have in the last few years assumed responsibility for the delivery of a number of services previously administered by DIAND. Compare the present situation with what would exist if the band had not assumed its present responsibilities. Assess what changes in federal administration costs, if any, have occurred in the DIAND district and region concerned and in Ottawa as a result of this transfer of administrative responsibility. Examine the new administrative structures put in place by the band, compare its costs with the cost of the alternative administrative structure and make an assessment of relative cost effectiveness.

5. Estimate the costs incurred by DIAND and other agencies of the federal government specifically in securing the information that they deem necessary to account to Parliament for funds transferred to Indian bands and/or their organizations. Comment on the financial burden placed on Indian bands and/or their organizations by the requirements of accounting.

   Suggest alternative and less costly means of accounting for financial transfers.

6. Provide annual expenditure totals for DIAND and other departments where appropriate by program for housing, education, economic development, social welfare, social services and health. Include cumulative totals for the last decade, and comment on spending trends in real terms. Where possible provide comparisons with concrete results.

7. Examine and comment on the 1980 report of the Auditor General on DIAND's management policies and performance and the Department's response to that report. In particular, the Auditor General pointed to discrepancies between project expenditure listed in the estimates and reported in the public accounts. On a random basis and using a few selected projects, seek to explain differences between the amounts in the estimates, the national program operational plan, DIAND's responsibility centres and cost elements and the actual expenditures as recorded in the public accounts and such other financial reports as FINCON.

8. Review the various methods by which federal services are now delivered directly by line departments or agencies and the nature of supervision exercised in these instances by DIAND. Comment on the possibilities for reducing any duplication of administration that may exist within the federal bureaucracy through more widespread use of direct delivery of services by line departments and on other consequences which such an approach might have.

9. Consider new approaches to funding the functions of government, including the provision of services to Indian peoples in Canada, commenting in particular on the implications of direct transfers of federal funds to Indian governments at the band or other levels. In doing so, look at Canadian experience with transfers to provincial governments and Crown corporations. Assess such approaches in terms of administrative efficiency, accountability to Parliament, and the effect on the development of Indian government.

10. Review the structure and funding of Canadian organizations intended to promote international development, including government agencies such as CIDA and the IDRC and non-governmental organizations such as CUSO, to assess their utility as models in future for making federal funds available to Indian governmental and non-governmental organizations to promote development in Indian communities and among Indian peoples in Canada.

APPENDIX G

MEETINGS IN THE UNITED STATES

January 31 to February 4, 1983

Washington, D.C.

- Institute for the Development of Indian Law
- National Tribal Chairmen's Association
- Native American Rights Fund
- Bureau of Indian Affairs
- Congressional Committees Staff
- Indian Health Service
- Administration for Native Americans
- Indian Law Resource Centre
- Council of Energy Resource Tribes
- American Indian National Bank
- National Congress of American Indians

New Mexico

- Eight Northern Indian Pueblos Council
- Visits to Tesuque, Taos, Santo Domingo and San Felipe Pueblos

APPENDIX H

COMMITTEE STAFF

Committees and Private Legislation Branch

Mr. François Prégent, Clerk
Mr. Eugene Morawski, Clerk
Mrs. Micheline Rondeau-Parent, Clerk
Mr. Pierre de Champlain, Clerk
Mrs. Line St. Jacques, Secretary

Research Branch, Library of Parliament

Mrs. Barbara Reynolds, Research Officer
Mrs. Katharine Dunkley, Research Officer
Mr. Bruce Carson, Research Officer

Parliamentary Centre for Foreign Affairs and Foreign Trade

Mr. Peter Dobell, Policy Co-ordinator

Members' Staff

Ms. Penelope Muller, Assistant to the Chairman
Miss Iva Vranić, Assistant to the Vice-Chairman
Mr. Stuart Herbert, Assistant to Mr. Manly
Bett Tsa-Me-Gahl, Assistant to Mr. Manly
Mr. Randy Potts, New Democratic Party Research
Ms. Lynn Belsey, Assistant to Mr. Oberle

Assembly of First Nations

Rarihokwats, Researcher and Assistant to Ms. Jamieson
Mr. Danny Gaspé, Researcher
Miss Gail MacDonald, Researcher

Native Women's Association of Canada

Ms. Elizabeth Moore, Researcher

Native Council of Canada

Mr. Bill Lee, Researcher

Humphreys and Associates

Mr. David Humphreys, Press Attaché
Mr. Peter Lockyer, Press Attaché
Mr. Pierre La Traverse
Mr. Steve Hall

First Nations Consultants Inc.

Mr. Daniel Brant, Advance Person

Editors

Miss Kathryn Randle
Miss Lise Lebeau

Cover Artist

Mr. Leo Yerxa

A copy of the relevant Minutes of Proceedings and Evidence of the Sub-committee on Indian Self-Government (*Issues Nos. 1 to 17 inclusive*) and of the Special Committee on Indian Self-Government (*Issues Nos. 1 to 39 inclusive and No. 40, which contains the Second Report*) is tabled.

Respectfully submitted,

KEITH PENNER,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, OCTOBER 12, 1983
(109)

The Special Committee on Indian Self-Government met *in camera* at 3:50 o'clock p.m., this day, the Chairman, Mr. Penner, presiding.

Members of the Committee present: Messrs. Allmand, Manly, McDermid and Penner.

Ex-officio member present: From the Assembly of First Nations: Ms. Roberta Jamieson.

Liaison member present: From the Native Women's Association of Canada: Ms. Marlyn Kane.

In attendance: From the Research Branch of the Library of Parliament: Mrs. Barbara Reynolds and Mrs. Katharine Dunkley, Research Officers. *From the Parliamentary Centre for Foreign Affairs and Foreign Trade:* Mr. P. C. Dobell, Policy Co-ordinator.

The Committee resumed consideration of its Orders of Reference dated Wednesday, December 22, 1982 and Monday, September 12, 1983.

The Committee resumed consideration of its draft Report.

On motion of Mr. Manly, it was agreed,—That the draft report be adopted as the Committee's Second Report to the House and that the Chairman be instructed to present it to the House.

At 10:54 o'clock p.m., the Committee adjourned to the call of the Chair.

THURSDAY, OCTOBER 20, 1983
(110)

The Special Committee on Indian Self-Government met *in camera* at 3:52 o'clock p.m., this day, the Chairman, Mr. Penner, presiding.

Members of the Committee present: Messrs. Allmand, Chénier, Manly, Oberle and Penner.

Ex-officio member present: From the Assembly of First Nations: Ms. Roberta Jamieson.

In attendance: From the Research Branch of the Library of Parliament: Mrs. Barbara Reynolds and Mrs. Katharine Dunkley, Research Officers.

The Committee resumed consideration of its Orders of Reference dated Wednesday, December 22, 1982 and Monday, September 12, 1983.

The Committee proceeded to consider its future business.

On motion of Mr. Oberle, it was agreed,—That the contracts for services of the editors, Miss Kathryn Randle and Miss Lise Lebeau be extended under the same conditions of the original contracts.

On motion of Mr. Allmand, it was agreed,—That the Committee print 30,000 copies of the English version and 5,000 copies of the French version of Issue No. 40, which contains the Committee's Second Report to the House and that a distinctive cover be attached to all copies of Issue No. 40.

On motion of Mr. Manly, it was agreed,—That copies of the Committee's Second Report be sent to all of the following:

1. All witnesses who have appeared before the Sub-committee and the Special Committee on Indian Self-Government;

2. All Chiefs and Councils;

3. All Tribal Councils;

4. All names on the lists submitted by the Assembly of First Nations, the Native Council of Canada and the Native Women's Association of Canada.

5. The Premiers of the ten provinces and the leaders of the governments of the N.W.T. and Yukon.

6. All members of provincial and territorial legislatures.

7. Representatives of the Inuit Tapirisat of Canada.

On motion of Mr. Manly, it was agreed,—That the following four research projects, which were commissioned by the Committee, be filed as exhibits with the Clerk of the Com-

mittee and that they be made available based on the cost of reproduction: (*for description of each research project see Appendix F of Committee's Second Report to the House*)

1. Questions relating to the economic foundation for Indian Self-Government (Thalassa Research Associates). *Exhibit XX*

2. Various models for relations between indigenous peoples and governments (Policy Development Group). *Exhibit YY*

3. Trust relationships between the federal government (the Crown) and the Indian peoples of Canada (Arki and Nahwegahbow). *Exhibit ZZ*

4. Federal expenditures and mechanisms for their transfer to Indians (Coopers & Lybrand). *Exhibit AAA*

On motion of Mr. Manly, it was agreed,—That the Chairman, after consultation, be authorized to approve the final version of the press release relating to the Committee's Second Report.

On motion of Mr. Allmand, it was agreed,—That, following the tabling of the Committee's Second Report in the House, Mr. David Humphreys, press attaché, arrange and coordinate press conferences and/or interviews for the members of the Committee and that any extra expenses incurred by the members with respect to these conferences and/or interviews be submitted to the Clerk of the Committee for reimbursement.

At 6:09 o'clock p.m., the Committee adjourned to the call of the Chair.

François Prégent,
Clerk of the Committee.

The Two Row Wampum

When the Haudenosaunee first came into contact with the European nations, treaties of peace and friendship were made. Each was symbolized by the Gus-Wen-Tah or Two Row Wampum. There is a bed of white wampum which symbolizes the purity of the agreement. There are two rows of purple, and those two rows have the spirit of your ancestors and mine. There are three beads of wampum separating the two rows and they symbolize peace, friendship and respect.

These two rows will symbolize two paths or two vessels, travelling down the same river together. One, a birch bark canoe, will be for the Indian people, their laws, their customs and their ways. The other, a ship, will be for the white people and their laws, their customs and their ways. We shall each travel the river together, side by side, but in our own boat. Neither of us will try to steer the other's vessel.

The principles of the Two Row Wampum became the basis for all treaties and agreements that were made with the Europeans and later the Americans. Now that Canada is a fully independent nation, perhaps it will be possible to strike up the Two Row Wampum between us, so that we may go our ways, side by side, in friendship and peace.

— exerpted from presentations to the Special Committee by the Haudenosaunee Confederacy and from Wampum Belts by Tehanetorens

The cover painting is a two-row wampum belt on a landscape. But it is more than the representation of an object. Like the Haudenosaunee artist who made the belt, I am part of a process of carrying an idea through history — the idea symbolized by the two-row wampum. The belt shouldn't be forgotten in a museum, because it expresses an idea, and an idea can't be killed. This report is part of the same process of carrying the idea forward, and the painting expresses my hope that the report won't be set aside and forgotten either.

Leo Yerxa, artist